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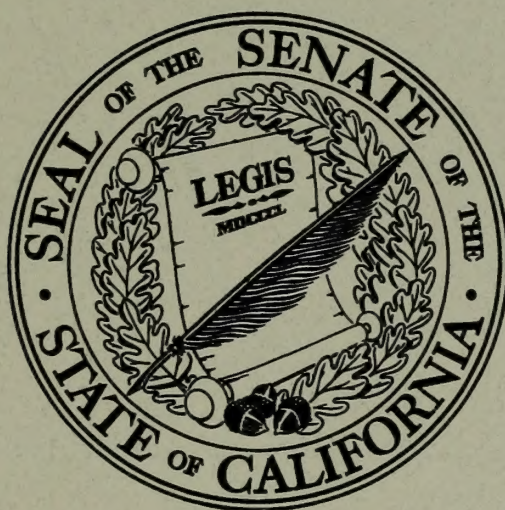








HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



GOVERNMENT  
DOCUMENTS DEPT

AUG 27 2009

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA  
WEDNESDAY, APRIL 22, 2009  
2:11 P.M.

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

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STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

--oOo--

WEDNESDAY, APRIL 22, 2009

2:11 P.M.

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Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

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MEMBERS PRESENT

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3

4 SENATOR DARRELL STEINBERG, Chair

5 SENATOR GIL CEDILLO

6 SENATOR SAMUEL AANESTAD

7 SENATOR ROBERT DUTTON

8 SENATOR JENNY OROPEZA

9

10

STAFF PRESENT

11

12 GREG SCHMIDT, Executive Officer

13 JANE LEONARD BROWN, Committee Assistant

14 NETTIE SABELHAUS, Appointments Consultant

15 DAN SAVAGE, Assistant to SENATOR CEDILLO

16 BILL BAILEY, Assistant to SENATOR AANESTAD

17 CHRIS BURNS, Assistant to SENATOR DUTTON

18 BRENDAN HUGHES, Assistant to SENATOR OROPEZA

19

20

ALSO PRESENT

21

22 MATTHEW L. CATE, Secretary, Department of Corrections  
and Rehabilitation

23 LUCETTA (LUCY) A. DUNN, Member, California  
Transportation Commission

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1 I know Senator Cedillo and Senator Aanestad  
2 will be here as well. I believe they are in other  
3 committees.  
4 Today we are going to once again take up the  
5 nomination of Matt Cate as the secretary for the  
6 Department of Corrections and Rehabilitation, and we  
7 will also take up Lucy Dunn after Matt Cate.  
8 So let us begin by -- I'm sorry.  
9 (Discussion off the record between  
10 Ms. Sabelhaus and Chairman Steinberg.)  
11 CHAIRMAN STEINBERG: Sometimes I just get ahead  
12 of myself. What can I say?  
13 Before we call Mr. Cate, let's do the reference  
14 bills. There's a motion -- moved by Senator Oropeza.  
15 Please call the roll.  
16 MS. BROWN: Senator Cedillo.  
17 Dutton.  
18 SENATOR DUTTON: Aye.  
19 MS. BROWN: Dutton aye.  
20 Oropeza.  
21 SENATOR OROPEZA: Aye.  
22 MS. BROWN: Oropeza aye.  
23 Aanestad.  
24 Steinberg.  
25 CHAIRMAN STEINBERG: Aye.

2

1 **PROCEEDINGS**  
2 CHAIRMAN STEINBERG: Good afternoon, everyone.  
3 The Senate Rules Committee will come to order. Without  
4 objection, we will begin as a subcommittee, as this is  
5 the time of year, for those of you who are new to the  
6 legislative process, where Members have to be two or  
7 three places at one time because of various committees.  
8 And now we actually have a quorum.  
9 Senator Oropeza, welcome.  
10 SENATOR OROPEZA: Sorry.  
11 CHAIRMAN STEINBERG: Let's call the roll since  
12 we have a quorum.  
13 MS. BROWN: Senator Cedillo.  
14 Dutton.  
15 SENATOR DUTTON: Here.  
16 MS. BROWN: Dutton here.  
17 Oropeza.  
18 SENATOR OROPEZA: Here.  
19 MS. BROWN: Oropeza here.  
20 Aanestad.  
21 Steinberg.  
22 CHAIRMAN STEINBERG: Here.  
23 MS. BROWN: Steinberg here.  
24 CHAIRMAN STEINBERG: A quorum has been  
25 established. Very good.

1

1 MS. BROWN: Steinberg aye.  
2 CHAIRMAN STEINBERG: We'll leave the roll open  
3 for the other two Senators, of course.  
4 Number two, legislation, we do have SCR 13,  
5 which is the creation of the joint committee for the  
6 protection of Lake Tahoe.  
7 Should I step down, or can I do it from here?  
8 SENATOR OROPEZA: Do it from there.  
9 (Discussion off the record.)  
10 CHAIRMAN STEINBERG: Now, Matt Cate.  
11 MR. CATE: Thank you.  
12 CHAIRMAN STEINBERG: What's your view on  
13 Lake Tahoe?  
14 MR. CATE: Keep it blue.  
15 CHAIRMAN STEINBERG: Keep it blue.  
16 Mr. Cate, thank you for coming back to the  
17 Committee. As we indicated during the first hearing, we  
18 intend to make this the final hearing of your  
19 confirmation process, and we --  
20 Again, the Committee very much appreciates your  
21 patience and also your responsiveness in getting back to  
22 us with the information that we requested. And the sum  
23 and substance of that information that we requested was  
24 we want to know, as the legislative part and the  
25 legislative branch of government here, how you intend to

3



1 translate the broad goals of programming and  
2 rehabilitation into specific benchmarks, timelines, so  
3 that we can, over time, you know, measure whether we're  
4 actually making progress, because, you know, the long  
5 history -- or the history, recent history of the  
6 department, is that a lot of promises get made, and,  
7 despite best intentions, they aren't always delivered.  
8 And benchmarks and timetables are no guarantees that  
9 they will, in fact, be delivered; but it sure helps,  
10 because it allows us, then, all to assess the progress  
11 that you and the department are making on behalf of the  
12 people of California.

13 And so what I want to do in a few minutes  
14 here -- I don't think we want to -- you know, the  
15 Members are free to get into depth here, but to take a  
16 few minutes and review some of what you presented to the  
17 Committee before we make our concluding remarks and take  
18 the appropriate motions here.

19 And, Members, I'm going to refer to the  
20 document that is entitled "Benchmarks for Adult  
21 Programs." I'm sure these documents will be made  
22 available to the public, you know, upon request. We  
23 will make sure that they are part of this particular  
24 legislative record.

25 I reviewed the documents here, and on the one

4

1 hand I must say that it represents a significant promise  
2 for improvement, which is great; but on the other hand,  
3 when I consider a population of 170,000 people and see  
4 that the enrollment goal for traditional academic  
5 education is only 15,837 inmates by June 30th, 2010, it  
6 does beg the question: What about the rest of the  
7 inmates?

8 Can you address -- Can you put the number into  
9 some context for us, please.

10 MR. CATE: Yes. Thank you for this  
11 opportunity, and thank you for raising this issue of  
12 benchmarks to begin with. I think it's been a very good  
13 process for us to go forward with it.

14 As you will recall, I've got big plans  
15 regarding enormous benchmarks on a grand scale, but I  
16 think focusing on these key issues, though, right now  
17 has been very helpful.

18 And so regarding the benchmarks, in particular  
19 on academic education, and I could say the same thing  
20 for several others of these --

21 CHAIRMAN STEINBERG: Okay. Let's just review.  
22 You presented benchmarks on traditional academic  
23 education, vocational education, literacy, substance  
24 abuse, and services for mentally ill parolees and  
25 inmates.

5

1 MR. CATE: Correct. So for each, one limiting  
2 factor is that -- we self-imposed was that we assumed  
3 current funding levels going forward. So the assumption  
4 here of growth to 1500 -- between 1500 -- I'm sorry --  
5 15,800 and 17,100 at a 78 percent participation rate for  
6 those inmates represents what we think we can do in --  
7 with current levels of funding. So that's one, I would  
8 call, self-imposed limitation. In light of the budget  
9 and in light of the role of this body on that issue, I  
10 didn't want to make assumptions there. So that's one  
11 aspect of this.

12 The other is more policy-driven, which was we  
13 wanted to make sure that we've got -- we're on solid  
14 ground regarding the utilization of these resources. So  
15 I feel very comfortable that we're going to reach  
16 70 percent participation, meaning we've got to limit the  
17 lockdowns of these facilities; we've got to make sure  
18 inmates have access to these programs; we've got to  
19 incentivize inmates to attend and complete programs, in  
20 my view, which will drive these participation rates up  
21 so that every dollar invested by this legislative body,  
22 the legislature as a whole, will see the maximum fruit.  
23 So those two things, I think, represent the limit.

24 The other thing I will say about this is that  
25 we are just now, as you know, in the last six months,

6

1 have our assessments in for these kinds of programs in  
2 all the reception centers. So we'll have a much better  
3 indication at that time what the actual need is. We  
4 know in this case, however, in academic education, we've  
5 got definitely more inmates who need this -- who need  
6 traditional academic education than we have dollars and  
7 that we have slots for.

8 If I can get in one more commercial point  
9 before I give it back, I also would like to note that  
10 the independent study, "Distance Learning," and we'll  
11 talk about the literacy program, but I think all of  
12 those will help assist to move forward in the academic  
13 education realm.

14 CHAIRMAN STEINBERG: When I read this for the  
15 first time, I admit that I got a little confused, and  
16 when I went over it the second time with Nettie, I  
17 clarified. I want to make sure that no one else has the  
18 same confusion, which is that when you describe a  
19 78 percent participation rate by June 30th, 2010, that's  
20 not saying that 78 percent of the inmates will, in fact,  
21 be participating in academic education programs.  
22 Correct?

23 MR. CATE: That's right. I'm sorry.

24 CHAIRMAN STEINBERG: I'm sorry. I just want  
25 to --

7



1 The base number is 15,837 out of a total of  
2 about 170,000, correct?  
3 MR. CATE: Correct. One hundred fifty-five  
4 thousand in our traditional 33 prisons, still a huge  
5 number.  
6 CHAIRMAN STEINBERG: Okay.  
7 MR. CATE: Yes.  
8 CHAIRMAN STEINBERG: The 78 percent refers to  
9 that among the 15,837 who will participate, they will  
10 only get 78 percent of their hours because of system  
11 issues, lockdowns and other security-related issues,  
12 correct?  
13 MR. CATE: Well, that's definitely a big  
14 contributor, security-related issues and lockdowns.  
15 Also, though, teacher vacancies, which we're going to  
16 try to address through hiring substitutes, also inmate  
17 refusals to come for whatever reason.  
18 And another really big segment of this, I think  
19 goes unnoticed, is that we now have medical providers,  
20 mental-health providers, all that need this inmate  
21 during the course of a day to make their appointments.  
22 So, like in a traditional school, they'll need to be  
23 absent to attend these other appointments, so they'll be  
24 some missed hours for that as well.  
25 CHAIRMAN STEINBERG: Some of that can be

8

1 mitigated by better coordination and technology, and a  
2 scheduling system that says: Okay. If an inmate is in  
3 school till 1:00 o'clock, then doctors' appointments are  
4 in fact then scheduled for 2:30, 3:00 o'clock,  
5 4:00 o'clock, right? Is there anybody working on that?  
6 MR. CATE: That's really the benefit of going  
7 to a half-day schedule. If you go to a half-day  
8 schedule, then you have the afternoon to make these  
9 other appointments much more readily. So we would like  
10 to go to a half-day schedule everywhere we can for just  
11 that reason.  
12 Secondly, I think your point is well taken. We  
13 need to do a better overall job of coordinating. One of  
14 the benefits of going to an electronic file system is  
15 that all the providers, whether academic, or mental  
16 health, or medical, or a security individual leader,  
17 will have the ability to look at the offender's file at  
18 the same time, and that will help with coordination as  
19 well.  
20 CHAIRMAN STEINBERG: You know, obviously, as I  
21 promised, and we're going to finish this today, but for  
22 your own purposes, just as you said this was valuable  
23 for your planning purposes, I might suggest going  
24 forward that you do the same sort of benchmark work  
25 around technology and computers for inmates, because,

9

1 you know, look what's happening in public schools,  
2 right? There's a great drive, and, you know, we're  
3 falling well short there in the number of school  
4 districts and schools to improve the technology, to make  
5 sure the students have access to computers. And the  
6 staff has made it pretty clear to us here how few  
7 inmates actually have access to computers and computer  
8 keyboards, so I would ask if you would do the same sort  
9 of work and maybe report back to the Committee even  
10 post-confirmation with that information.  
11 MR. CATE: I'd be happy to, and I agree with  
12 the staff comments that this is an area that's needed  
13 training for, really, anyone who wants to enter the 21st  
14 century workforce in other than a job that is obviously,  
15 you know, a vocation that -- outside of the office.  
16 You've got to have some keyboarding skills.  
17 CHAIRMAN STEINBERG: The only other point I  
18 want to make on programming, and then we will move on,  
19 there has been significant legislative discussion, and I  
20 know discussion within the administration and between  
21 the branches, on parole reform, and we touched on it a  
22 little bit last time. And, you know, there are various  
23 ways to look at parole reform. There's direct  
24 discharge; there's earned discharge; there's search and  
25 seizure, authority, et cetera.

10

1 When we join this issue of parole reform  
2 sometime over the next weeks or months, whenever it is  
3 this legislative session, I want to make it real clear  
4 that one of the things I'm going to be looking for, and  
5 I think my colleagues are going to be looking for, are  
6 some additional investment in dollars for program;  
7 because whether you go to a direct discharge model,  
8 whether we use your risk-assessment tool that we talked  
9 about, if we aren't coupling that reform with program  
10 either pre-discharge or post-discharge, we're missing half  
11 the equation, in my view.  
12 And I know some of this is budget-driven --  
13 much of it is budget-driven. We have to make a  
14 \$400 million hole up in the budget as a result of what  
15 we did in February. But I'm going to have less of --  
16 I'm not going to react as positively to any particular  
17 parole-reform proposal if it's not coupled with finding  
18 some way, as difficult as it is, to put more resources  
19 into the programming side, both inside and outside.  
20 You know, I don't want to beat the dead horse  
21 here, but I do think it's reflected in one of the  
22 glaring numbers here in your candid benchmark report  
23 here, and that is mental health.  
24 MR. CATE: Right.  
25 CHAIRMAN STEINBERG: I mean, we're going from

11

1 zero to 300 -- 300 slots for parolees. How many  
2 parolees do we have?

3 MR. CATE: One hundred eighteen thousand.

4 CHAIRMAN STEINBERG: I mean, you don't have to  
5 be a -- You don't have to be a psychiatrist or  
6 psychologist or social worker to know that if you have  
7 spent a significant amount of time in state prison, when  
8 you come out, you probably have some mental-health  
9 issues that need addressing. And we only have the  
10 resources for 300 people. We, together -- It's not just  
11 you, because this is a resource question. We have to do  
12 better.

13 So it's got to be the reform in terms that we  
14 change the timelines, and the status of people must be  
15 coupled with a greater investment on the program side.

16 MR. CATE: And if I could, just on that issue,  
17 we do have our parole outpatient clinics, about 250  
18 mental-health providers that provide outpatient services  
19 for parolees with mental health problems. About 22,000  
20 have been provided services at these clinics during the  
21 fiscal year.

22 That model is just not as strong, Senator, as  
23 the wraparound model that you have been discussing and,  
24 really, that you and the legislature has been behind  
25 funding. These 300 positions are really the best -- the

12

1 that actually happens, because, you know, it's not --  
2 It's down in the trenches. It's at the base level where  
3 the rubber hits the road.

4 So how are you going to hold people accountable  
5 on that? And I am concerned about it.

6 MR. CATE: Right. You're right. There's,  
7 obviously, a director of parole and a regional  
8 administrator who are responsible directly for that.

9 The way I found out about it in the first place  
10 was going to region three and visiting with agents in  
11 the field. So I've made a commitment to continue to get  
12 out, talk to people, and find out what's happening, to  
13 the extent I can, at 33 institutions and four parole  
14 regions and the DJJ facilities, et cetera.

15 The other is that I've asked for regular  
16 updates on this issue just so I can be kept in the loop.  
17 I fully expect to hear from you and others if things  
18 aren't going well, so I know I'll need an answer.

19 SENATOR OROPEZA: I don't want you to hear from  
20 me.

21 MR. CATE: Well, hopefully about good things.

22 SENATOR OROPEZA: Oh, okay. That's good. Fair  
23 enough. Fair enough.

24 MR. CATE: It's, again, one of those issues  
25 that is a little bit in flux --

14

1 best way to go with our most severely mentally ill.

2 CHAIRMAN STEINBERG: We know it works. We just  
3 know it works. It's housing, it's the array of  
4 supportive services together with the stick, the  
5 law-enforcement presence, that really gives us a chance  
6 of reducing recidivism. So this has got to be our  
7 shared goal and shared commitment. I'm just saying the  
8 context of it will come forward soon as we join the  
9 issue of parole reform.

10 Okay. I'll be quiet for a minute.

11 SENATOR OROPEZA: For a minute.

12 CHAIRMAN STEINBERG: Senator Oropeza.

13 SENATOR OROPEZA: I'll take that minute, sir.

14 CHAIRMAN STEINBERG: Okay.

15 SENATOR OROPEZA: Speaking of parole, I'm in  
16 receipt of the information regarding the plans to change  
17 and augment -- I guess there's some steps that will help  
18 reduce the caseload in my district that we talked about  
19 before.

20 MR. CATE: Correct.

21 SENATOR OROPEZA: If the steps are  
22 unsuccessful, I will hear about it, because now that  
23 this door has been opened and people know that I'm  
24 concerned, I'm going to hear. And so I really want to  
25 ask you about how you are going to be able to know if

13

1 SENATOR OROPEZA: Yes, I understand about some  
2 of the plans.

3 MR. CATE: Right.

4 SENATOR OROPEZA: Secondly, I'd like to talk  
5 with you just sort of to emphasize my areas of concern  
6 here as we wrap these sessions up.

7 The second of those has to do with juvenile  
8 justice, juvenile justice, and the fact that -- well,  
9 actually, we had our IG candidate with us last week --  
10 was it last week already -- recently and spoke a little  
11 bit about the cost, the \$250,000 per-ward cost related  
12 to our inmate -- our ward inmates. And, you know, he  
13 expressed some -- you know, a definite interest in this  
14 issue. And I --

15 I am very concerned about it, and it's sort of  
16 things that I have learned that don't seem to fit  
17 together so nicely, things like the fact that we still  
18 have problems with getting folks out three hours a day.  
19 We still -- we have these other -- We have problems with  
20 gaps in program. You know, we have these other issues,  
21 and yet it's costing us \$250,000 a ward.

22 I guess I want to plead with you and ask you  
23 once again: What is going to be done about seriously  
24 looking at that? To basically house juvenile wards --  
25 juvenile inmates for less than -- well, for more than

15



1 22 hours a day, or 21 hours a day -- more than 21 hours  
2 a day at the cost of \$250,000. I mean, what else can  
3 they be doing if they're not -- Do you know what I'm  
4 saying?

5 There's a disconnect there in terms of the cost  
6 and what they're getting, and some of the other things  
7 we have learned over the course of these hearings.

8 MR. CATE: Sure. I think, you know, you're  
9 right to raise those concerns. Those same things  
10 concern me and our director of juvenile justice.

11 We have seen a declining population. We are  
12 going to close a DJJ facility to drive down those costs.  
13 We have already completed our staffing study, and so we  
14 are going to be rolling that out as well, demonstrating  
15 that -- We will have cuts in staffing. We are  
16 overstaffed for our population right now. So we are  
17 going to be coming forward through the Department of  
18 Finance with those cuts.

19 In addition, on the program side, I think  
20 it's two points. One is that -- something we've talked  
21 about in the past is that we have to keep in mind the  
22 context that 95 percent of these wards are violent, have  
23 a violent past. They are -- many are mentally ill, have  
24 been abused themselves. But the need is very high.

25 Almost all states are in the six figures a year

16

1 to care for their wards, but the point is we still have  
2 pockets where things are not going like they should. I  
3 think the facility at Stark is one that the inspector  
4 general has brought up.

5 What we've done is we've sent a group of  
6 managers -- I hate to use the word, but a task force  
7 down there is really what it is, and they are down there  
8 this week looking at those issues to ask: Why is it  
9 that after so many different tries, we still have these  
10 30 wards in this high-risk core unit who are only  
11 getting 2 hours and 30 minutes, or however many it was,  
12 out of those rooms? It's unacceptable to me, and it's  
13 not acceptable to my director, so we're going to get  
14 that fixed.

15 The point, though, really is: You've got to  
16 have a program. They ought to be out of their rooms,  
17 you know, 16 hours a day.

18 SENATOR OROPEZA: Right, right.

19 MR. CATE: That's what the best models look  
20 like.

21 Now, it's easy for me to say that from  
22 Sacramento. It's hard when wards are violent to one  
23 another and violent to staff, to deal with that and  
24 still make sure they're out of their rooms all that  
25 time. But that's what people are -- That's why we have

17

1 professionals to deal with it. So that's our  
2 expectation, that we're out as much of the day as we  
3 possibly can.

4 SENATOR OROPEZA: So when we ask questions a  
5 year from now about this situation, you anticipate that  
6 there will be some changes in terms of facilities that  
7 are available, that that will drive the cost down per  
8 ward, that there will be more time where they can see  
9 the sunlight, so to speak.

10 MR. CATE: Right.

11 SENATOR OROPEZA: Are those reasonable  
12 expectations?

13 MR. CATE: I think they are. We're always  
14 going to have wards who on any given day are going to be  
15 in their room for a big portion of the day, because they  
16 may have done something violent the day before, so  
17 there's going to be a consequence for that. But that's  
18 not a punishment. That's to make sure we gain control  
19 of the facility.

20 But the point -- What you can expect out of us  
21 is: Each one of those wards should have a treatment  
22 plan.

23 SENATOR OROPEZA: That is followed.

24 MR. CATE: That is followed, that includes what  
25 they're doing all day. That's part of the best

18

1 practice.

2 SENATOR OROPEZA: I look forward to that. I  
3 really do. Even our most violent youth deserve that in  
4 our system. I think we all acknowledge that.

5 MR. CATE: And even outside of this process, I  
6 would love to work with you more closely on these  
7 issues.

8 SENATOR OROPEZA: Okay. Good.

9 Finally, we go back to the issue of women's  
10 prisons, and I am chagrined -- and that's mild. I'm  
11 really disturbed about the answers that I have received  
12 with regard to the money that has been allocated from  
13 the legislature for alternative approaches, like the  
14 multiservice centers, and that that money, as far I can  
15 tell, has -- is going to balance the budget, and that  
16 the percentages --

17 I mean, I did some ciphering here, and while  
18 we're -- we're talking about the governor vetoed  
19 400 million, right, so that's the number. All right.  
20 We're talking about a total amount of money that goes to  
21 the overall budget for women as .24, okay, less than 3  
22 percent, and granted it's a much smaller population.  
23 Most of these women have children. We're talking about,  
24 really, the amount of money that we allocated and that  
25 we are looking to spend on them as a drop in the bucket.

19

1 Out of a \$10 billion budget, it pencils out, as far as  
2 my math goes, to 24 million, which is not a lot of  
3 money; but the impact is immense on these women who can  
4 benefit so greatly from these alternative programs.

5 I don't know -- I feel like tearing my hair  
6 out. I don't know what to do to encourage and, you  
7 know -- I mean, I thought we had compelled through  
8 finance -- Through the financial budget process, I  
9 thought we had compelled that this happen, but the  
10 choice there is one that I just am very troubled by. I  
11 just have not gotten a good answer yet at all.

12 MR. CATE: And I understand your point. It's  
13 well taken. I think it's also indisputable that if you  
14 can rehabilitate a female offender, especially with  
15 children, you can impact the entire family cycle, which  
16 has dividends in this generation and the next  
17 generation. All that is really beyond dispute.

18 I think you have also made it clear that  
19 there's a priority on the part of the legislature to  
20 deal with these offenders in particular, to make sure  
21 that we're doing the best we can.

22 My staff tell me that we will go back in the  
23 field with the RFP for residential multiservice centers  
24 for the female offenders, which is the money we didn't  
25 spend. So we spent about 1.25 million this year of the

20

1 8 million that you allocated. We're going to revert  
2 those funds back to the legislature as opposed to  
3 spending them somewhere else. And then assuming, again,  
4 that the entire bottom of the economy doesn't fall out,  
5 our plan is to go to an RFP again in the fall and search  
6 and get more bids from multiservice centers and continue  
7 to push that. That's the direction we're headed.

8 SENATOR OROPEZA: All right. And I'm going to  
9 keep asking about this, because I just think -- I mean,  
10 there are branches of government for a reason, with  
11 checks and balance on it. Part of the legislature is,  
12 in this sense, to impact programs in the executive  
13 branch, and it hasn't happened on this one yet.

14 I'm glad to hear and I look forward to hearing  
15 more come the fall or the beginning of the year.

16 MR. CATE: Thank you.

17 SENATOR OROPEZA: Thank you.

18 Thank you, Mr. Chair.

19 CHAIRMAN STEINBERG: Thank you very much,  
20 Senator Oropeza.

21 Other Members. Senator Aanestad, Senator  
22 Cedillo, any questions?

23 All right. I want to follow up with one or two  
24 other areas, and then we'll bring this to a close.

25 One is if you can briefly describe, Mr. Cate,

21

1 your report back on management and leadership training.  
2 That's something we talked a lot about as well, and I  
3 want to make sure that we get that on the record since  
4 everyone agrees it is key to implementing any positive  
5 change within the department.

6 MR. CATE: Well, we had -- We did complete two  
7 sessions of our leadership development program last  
8 year, and two others we did cancel. And we also  
9 completed one session of our management skills  
10 development, and four were canceled.

11 So what I would like to do now is really talk  
12 to the Committee about what we plan to do in this area  
13 next year.

14 CHAIRMAN STEINBERG: Good.

15 MR. CATE: As you know from what we submitted,  
16 I had, frankly, underestimated how much progress the  
17 staff has made in assessing the need. They have done  
18 the assessing, and the leadership needs are great.  
19 We're now in the field assessing individual leaders, but  
20 we definitely need more leadership programs.

21 So here's what the schedule looks like for  
22 fiscal year '09-'10: Eight tracks of our core  
23 leadership development program at 25 attendees each.  
24 The leadership challenge workshop, which is -- the  
25 schedule is under development, but there's normally

22

1 between 24 and 36 a year, and those are 25 attendees  
2 each.

3 Management skills development, again, between  
4 six and ten at 24 attendees each. And, finally, our  
5 California public safety leadership, an ethics program  
6 which we teach ourselves, and typically five a year at  
7 24 attendees each. And along with our advanced and  
8 basic supervision programs, you know, the sergeants  
9 academy, the lieutenant academy, DJJ advanced  
10 supervision, they kind of coordinate things.

11 CHAIRMAN STEINBERG: How many of -- He's trying  
12 to turn it off.

13 Let's talk about cell phones in prisons for a  
14 minute.

15 MR. CATE: That's bad.

16 CHAIRMAN STEINBERG: It's bad. I forgot what I  
17 was going to --

18 MR. CATE: Supervision.

19 CHAIRMAN STEINBERG: Oh. You just described  
20 the year, but I'd like to know the breadth in terms of  
21 how many of your supervisory or management personnel,  
22 those programs you just described, you're actually going  
23 to cover.

24 MR. CATE: So a total -- Well, it will be --  
25 For example, the leadership development program would

23



1 be -- about 200 leaders would receive that during the  
2 course of the year, the leadership challenge workshop.  
3 And I can give you a fuller explanation, of course, on  
4 what each of these are, to the extent there's interest.

5 CHAIRMAN STEINBERG: Are you going to cover  
6 most, if not all, of the leaders in these programs?  
7 What I'm interested in is: Is it going to take five  
8 years to cover everybody, or are you going to be able to  
9 cover everybody with these various training --  
10 leadership training methods in a shorter period of time?

11 MR. CATE: Well, we're going to have to do some  
12 work in assessing where the need is the highest, and so  
13 as --

14 We're going prison to prison now and  
15 identifying the various weaknesses of those managers who  
16 are in position to move up, or those leaders who are in  
17 a position to move up into management, assessing their  
18 strengths and weaknesses. So that will inform our  
19 decision somewhat.

20 But we're talking about, literally, thousands  
21 of leaders within CDCR in a single year that could be  
22 impacted by this. It's a significant portion. You  
23 know, obviously, with 67,000 employees -- I just don't  
24 know, frankly, if this meets all our needs in the first  
25 year. I'll have to let you know exactly how deep that

24

1 goes.

2 CHAIRMAN STEINBERG: All right. Okay. Final  
3 comment before the final comment, and that is just to go  
4 back on the issue of parole reform and program.

5 I know the easy answer to that point that I  
6 made earlier is, "Well, jeez. Look at the state general  
7 fund. We have no money," and of course we don't. But  
8 this is where we need to get creative. And I do, again,  
9 expect any parole reform policy that comes forward will  
10 be coupled with a plan for, if not capturing significant  
11 savings sufficient out of the general fund to be able to  
12 fund more program, at a minimum a federal economic  
13 stimulus strategy, because I know that there are  
14 significant dollars coming down from Washington that can  
15 be used by the department to provide more programming  
16 both inside and out. And so, you know, now's the time,  
17 I think, working with Ms. Chick and the administration  
18 with the legislature to be aggressive about pursuing  
19 program dollars as well.

20 MR. CATE: Okay. Thank you.

21 CHAIRMAN STEINBERG: Okay. So let me conclude  
22 here and -- Are there any members of the public who have  
23 not testified during the first couple days of the  
24 proceedings who would like to have their voice heard on  
25 the matter? Did you --

25

1 MR. WARREN: You said we could do it one more  
2 time originally, but if you don't want to, I understand.

3 CHAIRMAN STEINBERG: Unless it's compelling.  
4 Sorry.

5 Is there anybody who hasn't testified? Okay.

6 I'm very pleased to support your nomination,  
7 and I would encourage my colleagues to do the same. You  
8 are a dedicated and accomplished public servant. I  
9 think you are the right person for the job. You are  
10 obviously earnest, hardworking, and sincere in your  
11 desire to improve CDCR, and so I have no question about,  
12 as I said, you being the right person for the job.

13 But I also think it's important to note that  
14 you're going to need a lot of help here from the  
15 administration that you work for and from the  
16 legislative branch of government, because you are the  
17 fourth secretary in four years, and there is absolutely  
18 no stability in your upper management positions.

19 You tell us now it will be different, and I  
20 believe you are very sincere. You're going to do  
21 everything you can to make that happen. But the fact  
22 is, for a whole host of circumstances, people have moved  
23 through these top positions faster than we can actually  
24 track them. So while we are hopeful with your  
25 leadership, Mr. Cate, that these things are going to

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1 turn around and turn around in a profound way, we are  
2 also skeptical.

3 There are a lot of positives. You obviously  
4 understand that you have an important role in preventing  
5 people from re-offending. You have made it very clear  
6 that you are not into just merely warehousing people,  
7 but you are trying to institute evidence-based  
8 programming, and that you are committed to trying to, as  
9 objectively as possible, assess the risks and needs of  
10 your inmates. But the negative has to be pointed out as  
11 well, because it represents our challenge. Can you do  
12 any of what you want to do so long as we have a huge  
13 overcrowding problem in our institutions? I have my  
14 doubts, and I know many have their doubts.

15 Your own benchmarks tell us that you won't  
16 begin to even reach enough of your population with  
17 meaningful education and training over the next several  
18 years.

19 You are trying, and it's to be commended, to  
20 institute real management training and succession  
21 planning; but, as you acknowledged a moment ago, it  
22 really is only the beginning of a plan.

23 And then there is the Division of Juvenile  
24 Justice that Senator Oropeza and others talked about  
25 throughout the hearing. By every measure, we are

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1 failing these juvenile offenders and the public. It's  
2 hard to find much that is positive in this costly  
3 system, even though it's been years since we entered  
4 into a settlement conference calling upon us to improve  
5 the system.

6 Now, this isn't all you, and actually the  
7 reason I'm so enthusiastic about your confirmation here  
8 is because I think that with your leadership, we may  
9 have the best chance we've had in a long time to make  
10 things better. And we are your partner in terms of  
11 trying to improve the adult and juvenile justice system,  
12 and you don't have to think you have to do it alone.

13 There's a tendency sometimes in the  
14 confirmation process that I'm told there's great  
15 communication prior to the confirmation and then once  
16 it's done, there's less communication. I think in this  
17 instance, we can't afford to do that. We have to be  
18 partners. We have to communicate; we have to work  
19 together; we have to push each other. You need to push  
20 us, or you need us to squeeze out resources where none  
21 exist in order to improve programming; and we need to  
22 push you to continue to make benchmarks and achieving  
23 those benchmarks your standard for success.

24 Thank you for your public service. I urge an  
25 aye vote.

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1 Any other Members? A motion.

2 SENATOR DUTTON: So moved.

3 CHAIRMAN STEINBERG: So moved by Senator  
4 Dutton.

5 Any closing comments?

6 MR. CATE: Only that I'm grateful for this  
7 opportunity; I'm humbled by your kind words; and I am  
8 committed to continue to partner with this legislature  
9 as deeply as we have before confirmation afterward. I  
10 truly will make myself available to you at any time, to  
11 the extent that you have issues or concerns, and I will  
12 bring our issues to you. And it's my -- it really is --

13 The reason I agreed to do this is I am wholly  
14 committed to trying to do something special, something  
15 that we can all be proud of together, working the  
16 administration and the legislature to really make a  
17 difference in this area that struggled for so long. So,  
18 again, I'm truly grateful that this body has shown me  
19 confidence thus far.

20 CHAIRMAN STEINBERG: Thank you.

21 Please call the roll.

22 MS. BROWN: Senator Cedillo.

23 SENATOR CEDILLO: Aye.

24 MS. BROWN: Cedillo aye.

25 Dutton.

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1 SENATOR DUTTON: Aye.

2 MS. BROWN: Dutton aye.

3 Oropeza.

4 Aanestad.

5 SENATOR AANESTAD: Aye.

6 MS. BROWN: Aanestad aye.

7 Steinberg.

8 CHAIRMAN STEINBERG: Aye.

9 MS. BROWN: Steinberg aye.

10 CHAIRMAN STEINBERG: We'll hold the roll open  
11 for Senator Oropeza to cast her vote, but the nomination  
12 will move -- the confirmation will move to the floor of  
13 the state Senate, and we'll take that up when?

14 MS. SABELHAUS: Two weeks.

15 CHAIRMAN STEINBERG: In two weeks, and then it  
16 will be final.

17 Thank you all very much.

18 MR. CATE: Thank you.

19 CHAIRMAN STEINBERG: Let's take two minutes.  
20 (Recess taken.)

21 CHAIRMAN STEINBERG: All right. We're going to  
22 open the roll for the absent member on file item 3A, the  
23 confirmation of Matt Cate.

24 MS. BROWN: Senator Oropeza.

25 SENATOR OROPEZA: Aye.

30

1 MS. BROWN: Senator Oropeza aye.

2 CHAIRMAN STEINBERG: That confirmation goes to  
3 the floor with a five to nothing vote.

4 So we are now caught up and will move to  
5 file item 3B, which is the confirmation of --

6 Is it "Loo-CHET-ta".

7 MS. DUNN: "Loo-SET-ta".

8 CHAIRMAN STEINBERG: Lucetta -- Lucy -- A.  
9 Dunn, as a member of the California Transportation  
10 Commission, and I want to welcome to the Committee two  
11 esteemed Senators representing parts of Orange County,  
12 Senator Lou Correa and Senator Tom Harman.

13 SENATOR CORREA: Thank you.

14 CHAIRMAN STEINBERG: Who would like to go  
15 first?

16 SENATOR CORREA: Thank you. I will go first.

17 First of all, Honorable Senators, Members of  
18 the Rules Committee, it's my pleasure to introduce  
19 Ms. Lucy Dunn, member of the California Transportation  
20 Commission. She's a graduate of the Harvard of the  
21 West Coast, Cal State Fullerton.

22 MS. DUNN: Here, here.

23 CHAIRMAN STEINBERG: I love it.

24 SENATOR CORREA: In June of 2008, the governor  
25 appointed her to the California Transportation

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1 Committee. Her goal is clear: To keep California  
2 prosperous. And she is supported by business, labor,  
3 Democrats and Republicans. Support from all areas.  
4 At a personal level, she's a mother of two  
5 boys, two grown boys now. As I was reading some of her  
6 data, I came across some very interesting comments she  
7 had made, that as a mom raising her children, she made a  
8 comment which was, "You don't want to miss Little League  
9 or soccer games. You don't get those years back."  
10 CHAIRMAN STEINBERG: Why are you making me feel  
11 bad?  
12 SENATOR CORREA: Actually, Ms. Dunn was  
13 noticing that your photo looked really well on the wall,  
14 Mr. Pro Tem.  
15 MS. DUNN: Excellent.  
16 SENATOR CORREA: She puts family first.  
17 Members of the Rules Committee, I represent my  
18 friend, Ms. Lucy Dunn. I ask for your aye vote for her  
19 confirmation, Senators.  
20 CHAIRMAN STEINBERG: Very good.  
21 Senator Harman.  
22 SENATOR HARMAN: Thank you very much,  
23 Mr. Chairman and Members of the Rules Committee. I'm  
24 also here in strong support of confirmation of Ms. Dunn.  
25 I would like to take just a moment, rather than

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1 go through her background and so forth. My association  
2 with her goes back -- I was trying to think, but it's  
3 probably at least 25 years.  
4 As many of you know, I'm a resident of the city  
5 of Huntington Beach and former vice chair of the City  
6 Council for six years in Huntington Beach.  
7 There's a major resource in Huntington Beach  
8 know as the Bolsa Chica Wetlands. Actually, I misspoke  
9 myself. It's outside of the city boundaries in county  
10 land, but Huntington Beach surrounds it.  
11 Lucy Dunn was with the development company that  
12 was attempting to develop the wetlands, as well as the  
13 Mesa located above the wetlands. And for many years  
14 Lucy and I were sort of on opposite sides of the fence,  
15 if you will. I was urging the development of the  
16 wetlands, and her company was, of course as they had the  
17 right to do, suggesting other items of development.  
18 But, eventually, a compromise was arrived at,  
19 and I'm pleased to tell you that Ms. Dunn had  
20 substantial involvement in that compromise and those  
21 wetlands. Thirteen hundred acres of the Bolsa Chica  
22 Wetlands were in fact saved and have now been restored  
23 to fully functioning wetlands.  
24 After that happened, then there was an issue  
25 about the land above the wetlands, called the Bolsa

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1 Chica Mesa, which was a property that could easily be  
2 developed with homes, and with Ms. Dunn's direction and  
3 guidance, once again, a compromise was arrived at  
4 between members of the environmental community,  
5 including myself, and the owner of the property. And a  
6 large portion of that property, about 50 percent of the  
7 Mesa, was preserved and protected. It was purchased  
8 with bond money, and I can tell you that that bond money  
9 would not -- let me repeat -- would not have been  
10 available but for the efforts of Lucy Dunn to have it  
11 included in one of the more recent statewide bond  
12 issues.  
13 So we're very appreciative to her for her  
14 efforts on behalf of the environment, on behalf of --  
15 preserving and protecting the Bolsa Chica Wetlands and  
16 the Bolsa Chica Mesa.  
17 And I wanted the Committee to understand that  
18 even though her background is -- primarily has been in  
19 the area of development, she has very, very strong  
20 environmental credentials, and I am pleased to recommend  
21 her for confirmation. And I know that this feeling,  
22 throughout the Huntington Beach community where she  
23 worked for many years, is shared by almost everyone.  
24 So I'm here today to encourage you to cast an  
25 aye vote for her confirmation. Thank you.

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1 CHAIRMAN STEINBERG: Thank you very much,  
2 Senator Harman.  
3 Thank you very much, Senator Correa.  
4 Ms. Dunn, it's sort of the tradition of the  
5 Committee to give you an opportunity to introduce any  
6 member of your family or your friends who may be in the  
7 audience today.  
8 MS. DUNN: Thank you very much.  
9 Both my sons, Orange County born and raised,  
10 are now living in San Francisco. My youngest is a  
11 deputy sheriff working for the San Francisco Sheriff's  
12 Department and on the night shift, so he's sleeping  
13 right now. And my oldest son is working for a marketing  
14 online communications firm and couldn't get the time  
15 off, because he's going on vacation with Mom to Hawaii  
16 in the first week in May. But they both said, "Mom,  
17 we're cheering you from afar." So thank you very much  
18 for the opportunity.  
19 CHAIRMAN STEINBERG: Wonderful. Wonderful.  
20 MS. DUNN: Kris Murray, from my Orange County  
21 Business Council staff, vice president of government  
22 affairs, is here on behalf of the Business Council, my  
23 employer.  
24 CHAIRMAN STEINBERG: Welcome. Welcome to you.  
25 Would you like to make an opening statement?

35



1 MS. DUNN: I just want to share with you that I  
2 am greatly honored to be before you all today and for  
3 consideration of confirmation.

4 I have jumped in with both feet in a short  
5 period of time, and I'm hoping that -- and will strive  
6 to make sure that my business background, development  
7 background, environmental background -- I currently  
8 serve as founder of the Bolsa Chica Conservancy, as  
9 Senator Harman mentioned. I hope that all of that will  
10 be very helpful for you in meeting the commission's  
11 goals, as well as a resource to both the administration  
12 and the legislature on keeping our mobility for the  
13 state of California and our safety for our people.

14 So thank you for -- very much for the  
15 opportunity of having me before you.

16 CHAIRMAN STEINBERG: Very, very, good.

17 I know Senator Oropeza, who is presenting a  
18 bill -- I don't know how quickly she will be back,  
19 because she has specific questions on the toll road  
20 issue. And if she doesn't get back in time, I'm happy  
21 to ask the questions.

22 Let me ask you a general question as to your  
23 philosophy and what you see as the right approach to  
24 providing the necessary mobility options for a growing  
25 population. Should we be relying mainly on highway

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1 expansion? Are other strategies necessary? What do you  
2 believe to be the state of transit in this state, and  
3 how important is that to meeting the transportation  
4 demands of the decades ahead?

5 MS. DUNN: Excellent, and I'm delighted. Of  
6 course, we all know that there is a very strong core  
7 value in the state of California for environmental  
8 protection and love of open space. It's reflected  
9 certainly in SB 375, where we're trying to do the right  
10 thing marrying housing planning with transportation  
11 planning, and protective of that open space.

12 So, ultimately, being efficient and effective  
13 with our land resources, and I knew this, Senator, as  
14 well, as your former housing director for the governor,  
15 that without infrastructure in place, without the right  
16 transportation systems in place and not just all new  
17 highways, but making sure our current systems, our  
18 present systems, are rehabilitated and repaired timely,  
19 and in addition having those transit options so you  
20 basically have all the arrows in the quiver for mobility  
21 for our people.

22 So transportation infrastructure planning first  
23 is more likely to get housing approved, and it's a very  
24 good, efficient marriage.

25 CHAIRMAN STEINBERG: Excuse me one second.

37

1 (Pause.)

2 CHAIRMAN STEINBERG: I'm sorry. Please  
3 continue.

4 MS. DUNN: So the bottom line is: Transit is  
5 just one of those arrows in the quiver that we need.  
6 And, clearly, again, SB 375, as we're all preparing to  
7 implant that and incorporate it locally, regionally, and  
8 at the state level, transit is the key component where  
9 we're incentivizing folks to be more efficient with  
10 their mobility.

11 CHAIRMAN STEINBERG: Do you have any thoughts  
12 or recommendations -- You know, the legislature,  
13 unfortunately, in the midst of this terrible fiscal  
14 crisis, has cut transit funding on the operational side  
15 significantly.

16 Do you have any thoughts, recommendations, as  
17 to how we might increase transit funding to make sure we  
18 have a balanced approach to transportation?

19 MS. DUNN: Well, from the policy perspective,  
20 it's a great disconnect when we're trying to implement  
21 SB 375 at the local level and yet recognize the tough,  
22 tough decisions that the legislature and the  
23 administration have to make in balancing the state  
24 budget. Hopefully, this is short-term pain, and it  
25 won't always be like this.

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1 We know -- Certainly, my experience in the  
2 Orange County community --

3 If I may share. Most folks don't realize that  
4 Orange County is the fifth largest county in America.  
5 We have more population in 798 little square miles than  
6 22 states in the union, and yet half of our county is  
7 fully protected open space, public land, uncommitted,  
8 agricultural production. So in Orange County, even our  
9 voters, in renewing Measure M, our sales tax measure,  
10 wanted to make sure that at least 25 percent of the  
11 renewal goes to transit. And so you'll -- At the local  
12 level, we're seeing the recognition of importance.

13 We've also, in those figures, incentivized  
14 local communities in Orange County, local cities, to  
15 develop their own what are called "Go Local" programs,  
16 their little transit systems to get folks to the  
17 backbone rail structure, for example.

18 So a lot of communities are starting to plan  
19 this way, and it could be the right way in a tough time  
20 until we come back with a stronger economy and are able  
21 to fund transit where it needs to be.

22 CHAIRMAN STEINBERG: My final question: Are  
23 there any particular red flags that you see in the early  
24 stages of implementation of SB 375 that we ought to know  
25 about?

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1 MS. DUNN: Yes. I believe, Senator, certainly  
2 the commission has shared with you -- The top three for  
3 me, and I think the commission has also addressed this,  
4 would be to make sure, please, that our self-help  
5 counties that have taken these measures to the voters  
6 and have approved project lists, that we are able to  
7 keep our promises to our voters, and that the timing of  
8 those projects coincides with implementation of 375 so  
9 that the timing meshes. Right now, it's off, and it  
10 opens up these projects for litigation, which is not an  
11 efficient use of precious state dollars coming down both  
12 from the federal as well as Prop 1B. That's number one.

13 Number two, I know from housing director days  
14 that the number one issue to the production of housing  
15 in a state where we have a continuous, chronic shortfall  
16 for our growing population, the number one issue for  
17 housing from all stakeholders, from the environmental  
18 community to financing, is making sure infrastructure is  
19 in place first. Housing won't get approved if traffic  
20 is congested.

21 So making sure that we allow our transportation  
22 folks to have the same CEQA benefits that our housing  
23 folks do, incentivize so that the timing is right. I  
24 mean, that's the beauty of this law, is meshing housing  
25 and infrastructure together. Let's get the CEQA right

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1 on this as well.

2 And then the third I would share with you is  
3 making sure the language which -- I mean, it's hard to  
4 craft these things with a lot of people in the room, but  
5 there are some language clarifications that would be  
6 very helpful to the regulated community in light of the  
7 fact that I've been personally attending many SCAG  
8 presentations, ARB presentations, and one group says  
9 this is what it means, another group says this is what  
10 it means. To have that language clarification helpful  
11 up front is far more efficient than having our court  
12 system decide it.

13 So thank you for asking me. Those are three  
14 top issues.

15 CHAIRMAN STEINBERG: Thank you very much for  
16 your thorough answer. Appreciate it.

17 Senator Oropeza.

18 SENATOR OROPEZA: Thank you. Nice to meet you.  
19 Glad you could be here.

20 MS. DUNN: Thank you.

21 SENATOR OROPEZA: I have a couple of very  
22 specific issues I'd like to talk with you about, and if  
23 you checked on anything, you could probably guess what  
24 one of them is. I would like to talk a little bit about  
25 toll roads, and toll lanes, and tolls in general, and

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1 your point of view on such.

2 The commission is going to play an important  
3 and significant role in selecting the three projects,  
4 and I understand that when -- in this time that you have  
5 been on the commission, that you were in favor of  
6 building toll road 241 which went through or would have  
7 gone through San Onofre Beach.

8 Clearly, Orange County has significant  
9 experience with toll roads, given the 91 experience  
10 which you might want to comment on. I have my own views  
11 as to its success or failure. Certainly, in the short  
12 run it was, in my view, not a glowing example of what  
13 would be the way we should do things.

14 I'd like to ask you a couple questions on that.  
15 One, Why did you vote in favor? Let's start there. Why  
16 did you vote in favor of putting that toll road through  
17 that -- San Onofre?

18 MS. DUNN: Senator, my understanding is when I  
19 was on the commission, there has been no vote on the  
20 241. In fact, it was -- it was -- I'm not even sure if  
21 it went through the commission other than the commission  
22 did support the road.

23 SENATOR OROPEZA: Okay. Yes. I'm talking  
24 about support, and I understand you were publicly  
25 supportive.

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1 MS. DUNN: Yes, that is correct. And I share  
2 with you that I live right there. I live literally  
3 where the 241 dead-ends. It is our own state road to  
4 nowhere right now. So it's not really the building of  
5 the road. It's actually completing the road. It is  
6 required for Southern California's air quality  
7 conformity. It is -- it was -- It was under the purview  
8 of a joint powers authority of 11 cities and the county,  
9 and I supported it because I understood that there's  
10 balancing that needs to go on. Yes, the alignment  
11 did -- the transportation corridor agencies did choose,  
12 after an environmental review, an alignment through a  
13 state park. Not the beach, but San Onofre State Park.

14 That was very troubling to me, and I freely  
15 admit it. However, it's one of those things where we  
16 had to make choices in our county. We love our open  
17 space just like everyone else; but on balance, Senator,  
18 when you have to make a choice, this appeared to be,  
19 after all the environmental review that went through,  
20 the best choice for the park.

21 Now, if I may, one more point.

22 SENATOR OROPEZA: Please.

23 MS. DUNN: It really, frankly, is a bit of a  
24 moot issue because of the fact that the California  
25 Coastal Commission and I could see it coming anyway for

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1 all of my years working with the commission. The  
2 commission was going to deny that alignment.

3 SENATOR OROPEZA: But Ms. Dunn, I would say  
4 that is not -- The fact that it may not go through now  
5 is not a moot issue relative to your point of view.

6 MS. DUNN: Yes, that is true.

7 SENATOR OROPEZA: I also wanted to ask you to  
8 really put your hat on today as a statewide  
9 commissioner. I know you talked a lot about Orange  
10 County's needs and this and that, and I'm looking for  
11 commissioners who are going to have the statewide  
12 vision. And I'm asking you about your point of view on  
13 this project relative to its placement, and you've  
14 talked about that, but also relative to its funding  
15 source, which is tolling.

16 MS. DUNN: Correct.

17 SENATOR OROPEZA: So can you talk a little bit  
18 about your philosophy, approach, you know, how you see  
19 tolling in terms of tolling for transportation  
20 infrastructure projects.

21 MS. DUNN: Yes. A couple questions you asked  
22 earlier.

23 There's a balance that went into my personal  
24 philosophy when I live there. I know this park, and  
25 this wasn't just a project for Orange County. It was

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1 experience might translate statewide.

2 In Orange County, we have two systems. First,  
3 you mentioned the 91 Express. It started out, perhaps,  
4 not so good as a private road, but it's now got  
5 government oversight with private capital that was used  
6 to build it.

7 The tolls collected on the 91 are actually  
8 being used to benefit the non-toll lanes. That's a  
9 great asset in tough resources. And so --

10 SENATOR OROPEZA: In -- Benefit in terms of  
11 how?

12 MS. DUNN: In repairs, in maintenance. And top  
13 of it, we didn't -- OCTA, they didn't just take a lane  
14 away to create a toll lane. They actually added  
15 capacity by adding a toll lane. And then on top of it,  
16 they used congestion pricing so that in tough times, you  
17 would choose to use it. In non-tough times, the toll is  
18 less. As the toll's higher, it moves slower.

19 SENATOR OROPEZA: Meaning the congestion is  
20 worse or --

21 MS. DUNN: Exactly right.

22 So the good news is that OCTA, in managing the  
23 project, actually even told or polled the users of the  
24 road and found out overarching that they were  
25 benefitted. They thought that their commute times had

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1 required by SCAG, which is half the population of the  
2 state of California --

3 SENATOR OROPEZA: Yes, I know SCAG.

4 MS. DUNN: So you know.

5 The other aspect from a statewide perspective  
6 is as I studied the issue of the 241, and as troubling  
7 as it was to go through a park, I also knew two  
8 important facts: This is federal land that was leased  
9 to the state for a park with an easement for a road in  
10 the lease. That's point one, so I thought well...

11 Point number two, there are probably 42 state  
12 parks right now that have highways, state highways,  
13 either bisecting them or adjacent to them.

14 Now, I share with you, Senator, again, my  
15 preference is that they wouldn't go through a park, and  
16 in this particular case, in this particular road, the  
17 transportation corridor agencies -- they have to come  
18 back now and work with environmentalists and supporters  
19 and realign this thing.

20 SENATOR OROPEZA: I understand, and I think you  
21 made clear your point of view on that. So on the other  
22 issues, financing and tolling, how do you feel about  
23 toll roads and lanes?

24 MS. DUNN: Yes, ma'am. I think again -- I have  
25 my experience in Orange County, which I'm hoping that

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1 declined by an average of, I think, about 38 minutes --

2 SENATOR OROPEZA: I believe that.

3 MS. DUNN: -- something pretty significant, so  
4 a benefit there. And that's a different system than the  
5 241, 73, 261, the other toll roads that are managed by  
6 the joint powers authority of the Transportation  
7 Corridor Agencies, or TCA. That is more the traditional  
8 structure where all lanes are toll. You have to be on  
9 it -- You have to pay in order to use it. And they --  
10 We generally consider them a success, because they added  
11 51 new miles for transportation to the state system  
12 without cost to taxpayers and took off 300,000 cars a  
13 day from the 5 and the 405.

14 So in that regard, it works. It's another  
15 quiver or another arrow, if you will, in the quiver for  
16 mobility.

17 SENATOR OROPEZA: Let me tell you, I'm very  
18 concerned about this general -- It seems like an  
19 acceptance now, sort of an unquestioning acceptance that  
20 this is the wave of the future, the toll roads, because  
21 we, quote, have no money, so we're just going to do it  
22 that way from now on.

23 I would ask: Have you ever thought about the  
24 fact that the people who use it are happy with it  
25 because they use it, but people who can't afford it

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1 don't use it because they don't get a vote, and the  
2 question of -- in a public transportation system, is  
3 that really a good policy approach? I'm not talking  
4 about the financing part. Obviously, we know it can  
5 pencil out. All right?  
6 MS. DUNN: Yes.  
7 SENATOR OROPEZA: But I'm asking about the part  
8 that troubles me about it, which is this issue of equity  
9 and fairness and equal access. So have you thought  
10 about that at all, or what are your thoughts on that?  
11 MS. DUNN: I think that your assessment is  
12 correct. It's a struggle for those of us on the balance  
13 side; however, it is a government -- public-agency-run  
14 road system, the TCA, again, with private capital. And  
15 I would share with you that the non-toll users are very  
16 happy that 300,000 cars aren't impacting their daily  
17 commute over roads --  
18 SENATOR OROPEZA: But they would have probably  
19 liked an extra lane.  
20 MS. DUNN: Absolutely. Absolutely. Yes, yes.  
21 SENATOR OROPEZA: If you could have added the  
22 lane, not the toll, they would have had access.  
23 MS. DUNN: Correct, but then the funding for  
24 that road would not have come from private bond funding,  
25 right. It would have come from our Prop 1B or our --

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1 SENATOR OROPEZA: Right.  
2 MS. DUNN: So, hopefully, we can do a mix to  
3 leverage each other and make both systems intertwine/  
4 interact efficiently.  
5 SENATOR OROPEZA: Okay. So I think I get where  
6 you're coming from on it, which is you think -- please  
7 correct me if I'm not articulating correctly what you  
8 have said. That you think it's a reasonable financing  
9 approach and that it's --  
10 MS. DUNN: One tool, one tool to use.  
11 SENATOR OROPEZA: One tool. Now, on the one  
12 tool, what do you think about putting some parameters  
13 around how often we use this tolling mechanism in the  
14 state, or having the commission come down with some kind  
15 of guidance on some kind of limitations around the  
16 statewide use of toll lanes as the fee approach for  
17 financing.  
18 MS. DUNN: I think that that is something that  
19 we would look to you to work with, and if that made  
20 sense, I --  
21 Frankly, I don't know the answer to your  
22 question.  
23 SENATOR OROPEZA: You all have the authority,  
24 because the commission -- because you act on matters of  
25 projects, you certainly have the authority --

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1 It's a very powerful commission, very powerful  
2 commission. Big dollars. Big dollars.  
3 MS. DUNN: Yes.  
4 SENATOR OROPEZA: Forgive me. It's not a punt  
5 to the legislature necessarily, or hasn't been in the  
6 past, the commission's authority to set some parameters  
7 for what they want to fund, what their priorities are on  
8 the projects, and that's how you could weigh in on this  
9 issue if you felt that you wanted to.  
10 MS. DUNN: Very good.  
11 Senator, to that point, because you have given  
12 the commission some authority to start reviewing P3  
13 projects, I know that our staff has started working on  
14 those guidelines for how we should evaluate them as part  
15 of this. And so maybe that is a way to take your  
16 comments and attempt to implement when our commissioners  
17 do a retreat in June to address that.  
18 SENATOR OROPEZA: Would you be willing to bring  
19 that issue to the forefront and say, "This is something,  
20 because we're doing it more and more. We need to be  
21 looking at the statewide implications and the social  
22 impacts"?  
23 MS. DUNN: That makes sense.  
24 SENATOR OROPEZA: I'd appreciate that. That  
25 would give me some comfort in knowing that at least one

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1 commissioner is raising the issue and asking the  
2 questions. That would be terrific.  
3 MS. DUNN: Yes, ma'am.  
4 SENATOR OROPEZA: Let me just ask a very quick  
5 couple of questions about HOV lanes, which are sort of  
6 tangential to but not the same.  
7 As you know, currently, in an effort to  
8 incentivize the use of hybrids -- the purchase of  
9 hybrids several years ago, we allowed them to be used in  
10 toll lanes -- I mean in HOV lanes. And there's also  
11 been some experimentation, I think, at the commission  
12 where the thought was making a pilot program where they  
13 increased the capacity requirements and -- to see how  
14 far we could go in terms of the carpooling requirement.  
15 In other words, instead of two, three people, that kind  
16 of thing, sort of mixing it up on the HOV to see what  
17 works best.  
18 My question for you is: How do you feel the  
19 HOV lanes, as they're currently configured and with the  
20 current parameters in terms of the hybrids and that kind  
21 of thing, are working in terms of capacity management?  
22 MS. DUNN: Again, my Orange County experience  
23 is that they have worked and especially are used to  
24 encourage carpooling.  
25 I mean, if we're going to be incentivizing

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1 transit use and carpooling, this is a nice way to do it,  
2 is to offer the award of a predictable travel time.

3 I do know in Los Angeles they're converting an  
4 HOV lane to a HOT lane, high-occupancy toll lane. That  
5 is an interesting question. OCTA did not do that on the  
6 91 express. They actually added capacity by adding a  
7 HOT lane; whereas in L.A., they're converting an HOV  
8 lane to a HOT lane.

9 SENATOR OROPEZA: Right.

10 MS. DUNN: I think the study -- and, again,  
11 this is one of those issues on balance, what they were  
12 finding is that in L.A. the HOV lane was underutilized,  
13 and so they were --

14 SENATOR OROPEZA: I want to know where that is.

15 MS. DUNN: I have to share with you that I was  
16 told by staff that --

17 SENATOR OROPEZA: Where is it? Do you know by  
18 any chance?

19 MS. DUNN: It's the 210, the I-10, and so --

20 SENATOR OROPEZA: The 10?

21 MS. DUNN: I think that was one of them. I  
22 understand. So that is one of the issues, so you  
23 know...

24 SENATOR DUTTON: The 110.

25 SENATOR OROPEZA: The 110?

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1 Correct. Yeah.

2 SENATOR OROPEZA: Okay. Finally -- final  
3 point. I'd like to add my support to the remarks of --  
4 which I heard just a little on my way out to go and do a  
5 bill -- of the Chair relative to transit.

6 CHAIRMAN STEINBERG: They were fine remarks, by  
7 the way.

8 SENATOR OROPEZA: I'm sure they were excellent  
9 remarks, and I'll listen to them on the tape.

10 Let me just suggest that in terms of the  
11 division of resources between transit and -- and, you  
12 know, cars, there's another way to look at it other than  
13 just straight, "We're only getting this much money."  
14 There's looking at the formula. There's looking at in  
15 today's -- This is big-picture stuff. This is what the  
16 commission should be looking at, big-picture stuff.  
17 Should it still be -- is it 20 percent? Yeah -- set  
18 aside of the money is for transit, dedicated to transit,  
19 certain resources, certain pots of money, or should we  
20 be looking at changes in that to incentivize communities  
21 to get more into mass transit?

22 I just would suggest that there's more than one  
23 way to look at using your resources to get at a policy  
24 objective, and your job as a commissioner is not only to  
25 make some practical decisions, but to make the higher-

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1 MS. DUNN: The 110, yeah. I'm sorry. The 110.

2 SENATOR OROPEZA: Okay.

3 MS. DUNN: So it is one of those things that I  
4 know our commission is looking at.

5 SENATOR OROPEZA: Do you think that hybrids in  
6 this climate today, where we are today, should be  
7 included in the HOV lanes? Or if we were making the  
8 decision now, would you recommend it or would you not?

9 MS. DUNN: I share with you I just had a  
10 meeting with Nissan a week ago Friday, and they were  
11 asking -- in my role at the Orange County Business  
12 Council, they were asking for infrastructure support,  
13 because in 20 months they're about to mass produce  
14 electric vehicles for the State of California, so they  
15 need the plugs. They need parking structures with  
16 plugs.

17 My sense is if you're into mass production, the  
18 goal, of course, is to reduce greenhouse gases. I'm not  
19 so sure. I think we might want to encourage carpooling  
20 as opposed to having the hybrids or electrics in there.

21 My understanding is the -- sort of that window  
22 to allow hybrids has expired anyway, for the new ones.  
23 The new ones.

24 SENATOR OROPEZA: The number has topped out?

25 MS. DUNN: Correct. The number has topped out.

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1 level-thinking decisions about the direction, the  
2 overall direction that the state is going to go, and  
3 it's on that level where you can -- through creative  
4 thought and work, you can change just about -- well, a  
5 lot of stuff, including the commitment to transit.

6 So I would ask you to think about that. I  
7 feel, as I think the Chair does, I think he does, that  
8 we need to have a greater emphasis on transit, and so I  
9 would just add my two cents on that. And I thank my  
10 colleagues for their patience.

11 CHAIRMAN STEINBERG: Thank you very much,  
12 Senator. Your very important line of questions.

13 Senator Dutton.

14 SENATOR DUTTON: I'm waiting for something from  
15 my office, so if somebody else has a question....

16 CHAIRMAN STEINBERG: Senator Aanestad,  
17 Senator Cedillo.

18 Senator Cedillo.

19 SENATOR CEDILLO: Just some inquiry, on this --  
20 These hybrids on the HOV lanes, can you tell me when  
21 this program ends, or is it a program to perpetuity?

22 MS. DUNN: I honestly don't know the answer,  
23 but I'm happy to get that back. My understanding is  
24 there was a cap at the number of vehicles that got  
25 stickers, correct, and that the cap has been reached, so

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1 there's no new hybrids being allowed. But I will freely  
2 admit I'm not an expert in this, so I would be happy to  
3 get back to you on it.

4 SENATOR CEDILLO: Are you guys the ones who  
5 would do studies or the evaluation of the efficiency of  
6 that program, the effectiveness of that program?

7 MS. DUNN: I believe that would have been done  
8 by Caltrans, if a study was done, and I'm happy to ask  
9 for that as well.

10 SENATOR CEDILLO: I'm fine.

11 CHAIRMAN STEINBERG: Senator -- I mean, we can  
12 take a break if you want, Senator Dutton.

13 SENATOR DUTTON: If you want to take a break --

14 CHAIRMAN STEINBERG: No, if you want --

15 SENATOR DUTTON: I have a visual coming down.

16 CHAIRMAN STEINBERG: Okay. Let's talk

17 philosophy for a moment.

18 Let's take a two-minute break until Senator

19 Dutton gets his video. Okay.

20 (Recess taken.)

21 CHAIRMAN STEINBERG: Okay. If we may, we will  
22 come back to order.

23 Okay. Senator Dutton, you have the floor.

24 SENATOR DUTTON: Thank you. First of all, I'll  
25 start off by saying I have a strong interest in

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1 in there for local cities and counties to have dedicated  
2 dollars for them to help fill in the gaps. And we also  
3 wanted to make sure that there was a process in place.

4 Now, one of the big challenges we've been  
5 having here of late -- If you take a look at the  
6 legislature and who's here today, there's not that many  
7 of us left that were here when 1B went through the  
8 process. So I would suggest -- and you're going to see  
9 a lot of legislation, a lot of things that may come up  
10 kind of reinventing the wheel, and I think most of those  
11 dollars are now program.

12 MS. DUNN: Yes.

13 SENATOR DUTTON: But it's been an ongoing  
14 battle to try to make sure that we stay to the original  
15 purpose.

16 One of the purposes was to provide the CTC with  
17 enough resources so they could help connect the dots and  
18 provide that framework so that we can, I guess -- With  
19 the governor's office, we worked very closely and very  
20 diligently on this piece of legislation. So it's  
21 something I'm still very proud of. I think it's done  
22 its job, and I would appreciate it if you could try to  
23 help make sure that we stay the course and make sure  
24 those dollars continue to get spent as they were  
25 represented to the people of California when they voted.

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1 transportation. Back when we did Proposition 1B, I  
2 worked very closely with Senator Perata, Senator  
3 Torlakson. In fact, I was very proud of that piece of  
4 legislation, because it came out of the Senate on a 38  
5 to one vote. We had one member absent.

6 I just wanted to -- to give you an idea of the  
7 challenge that I think you have.

8 MS. DUNN: Senator, is this a multiple-choice  
9 question?

10 SENATOR DUTTON: No. This here is before 1B,  
11 okay, and this was after 1B. All right (indicating).

12 I do expect you to be able to keep track of  
13 every one of these dollars that's on here; but more  
14 important than that, 1B was very well thought out. It  
15 went through a lot of different stages. What we tried  
16 to do when we did 1B is we tried to actually take a look  
17 at the state as a whole. That's the reason why you see  
18 a major investment in mass transit, over four billion  
19 dollars. That's why you see a major investment,  
20 because, obviously, L.A.'s needs, San Francisco, are  
21 different than, like, the central valley. You see a  
22 billion dollars -- Actually, this was the only earmark  
23 for '99, and improving that for the central valley  
24 (indicating).

25 That's the reason why also we put serious money

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1 I just want to thank you for your patience, but  
2 I think it kind of -- when you take a look at the chart  
3 and the maze on our transportation system, it does kind  
4 of provide an illustration of the challenge that you  
5 have to keep track of all that money.

6 MS. DUNN: Senator, thank you for that. And  
7 it's probably not any comfort, but my staff  
8 will attest-- my OCBC staff will attest to the fact that  
9 that chart is hanging on my wall in my office.

10 SENATOR DUTTON: Good.

11 MS. DUNN: And I have already started marking  
12 out in yellow where stuff is going. So I really am  
13 working hard to understand how it all flows, and I do  
14 know that the commission's -- you know, their top five  
15 priority is rolling out 1B and making sure that's  
16 efficient and effective, is right there for you.

17 SENATOR DUTTON: Thank you.

18 MS. DUNN: Thank you, sir.

19 CHAIRMAN STEINBERG: All right. Thank you very  
20 much.

21 Are there any other comments or questions for  
22 Ms. Dunn.

23 Are there witnesses in support? Members are  
24 welcome to stay, of course.

25 MR. DUNN: Thank you. I'm Keith Dunn here

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1 for the Self-Help Counties Coalition, 19 counties  
2 throughout California to raise the sales tax to help  
3 fund roads, highways, and also transit projects. I'm  
4 here pleased to be supporting Ms. Dunn. I'll also offer  
5 to stand in as an adopted family member, if those  
6 services are needed.

7 But very thrilled to be here to support  
8 Ms. Dunn's vision -- statewide vision of our  
9 transportation infrastructure and leadership in  
10 providing resources to make sure that those  
11 infrastructure needs are met, has played a critical role  
12 in the success of some of our self-help measures,  
13 specifically in Orange County, which she's very  
14 supportive of those efforts to fund projects, and we're  
15 very pleased to be here and support the nomination.

16 MR. MICHELI: Mr. Chair and Members, Chris  
17 Micheli here in support on behalf of my client, the  
18 Los Angeles County Metropolitan Transportation  
19 Authority, and I had to start only because Senator  
20 Harman's introduction took me back a few years.

21 Actually, Ms. Dunn and I know each other more  
22 than 15 years, because in one of my first lobbying jobs  
23 with the old firm started by Denny Carpenter and Kathy  
24 Snodgrass, one of clients was Lucy Dunn and her company  
25 down there, so we've known each other quite a long time,

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1 County Transportation Authority -- since this is a love  
2 fest, I'll just leave at it that -- in strong support  
3 for Ms. Dunn's confirmation.

4 CHAIRMAN STEINBERG: Very good. Thank you.

5 MS. MURRAY: Kris Murray with the Orange County  
6 Business Council, an organization totally biased in  
7 support of her nomination, representing large businesses  
8 and employers in Orange County strongly supporting her  
9 confirmation today. Her leadership has brought together  
10 stakeholders across the county on a broad range of  
11 issues, workforce development education, workforce  
12 housing, quality housing in our county, and  
13 infrastructure. Highly qualified, highly committed.  
14 Thank you.

15 CHAIRMAN STEINBERG: Thank you very much.

16 MR. KNAPP: I'm Bill Knapp, vice president of  
17 CH2M Hill, Southwest region, and we work with Ms. Dunn  
18 quite a bit, and Orange County Business Council, and  
19 have always known her to be incredibly well-versed,  
20 balanced in her views, and brings the best ideas  
21 together and builds the coalition, so we're in firm  
22 support.

23 CHAIRMAN STEINBERG: Thank you.

24 Are there any witnesses in opposition? There  
25 are none.

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1 also through her tenure at HCD and OCBC.

2 But the MTA did send a letter urging your  
3 confirmation of her. Art Leahy is the new CEO at L.A.  
4 Metro, who had come over from OCTA, and has a long  
5 history with Ms. Dunn in Orange County, and they cited  
6 her lengthy track record of community service and  
7 leadership, her efforts at learning the nuances of  
8 transportation funding in the state, Senator Dutton, and  
9 they endorsed her advocacy for transparency and  
10 accountability, as well as for fair distribution of  
11 state funds in transportation, so we urge her  
12 confirmation before the Rules Committee.

13 CHAIRMAN STEINBERG: Thank you very much,  
14 Mr. Micheli.

15 Briefly, if we may now.

16 MR. CHANG: Mr. Chair and Members of the  
17 Committee, Tim Chang with the Auto Club of Southern  
18 California. We've known Ms. Dunn for a number of years.  
19 We've known her to have a great passion and knowledge  
20 for transportation issues. We know that she works to  
21 bring people together for the greater good of the local  
22 community, or, in this case, it would be for the state.  
23 And we, therefore, urge your support.

24 CHAIRMAN STEINBERG: Thank you very much, sir.

25 MS. TOPP: Moira Topp on behalf of the Orange

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1 I'm very pleased to support your nomination,  
2 Ms. Dunn. I've had the opportunity to work with you and  
3 to see you in action in a number of different instances,  
4 and the word that comes to mind for me is balance. And  
5 in addition to all of your other attributes, the  
6 intelligence and such, I hope you'll consider  
7 Senator Oropeza's comments very, very seriously in terms  
8 of how you look at the whole toll road and HOV issues  
9 going forward. But we desperately need in the state  
10 people with some balance and who pride themselves on  
11 problem solving, and I know that's what you do. So I'd  
12 be happy to take a motion on the nomination.

13 SENATOR DUTTON: Yes.

14 CHAIRMAN STEINBERG: Moved by Senator Dutton.  
15 Senator Oropeza, did you want to --

16 SENATOR OROPEZA: I'll be happy to make the  
17 motion.

18 CHAIRMAN STEINBERG: Senator Oropeza will make  
19 the motion.

20 SENATOR OROPEZA: We're going to become good  
21 friends.

22 CHAIRMAN STEINBERG: Exactly. Right.

23 SENATOR OROPEZA: She's the only woman, I might  
24 add, on this commission. It's a plus for you and a  
25 minus for the governor in terms of he needs to add some

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1 more.  
2 CHAIRMAN STEINBERG: That needs to change.  
3 SENATOR OROPEZA: It does need to change. It  
4 does need to change.  
5 MS. DUNN: Senator, if I may share, there are  
6 now two women on the dais at the California  
7 Transportation Commission, and that includes our new  
8 executive director, Bimla Rhinehart. So we will gang up  
9 on the boys. Yes.  
10 SENATOR OROPEZA: Thank you. All right.  
11 CHAIRMAN STEINBERG: Again, thank you to  
12 Senators Correa and Harman for sticking it out for your  
13 strong support.  
14 Please call the roll.  
15 MS. BROWN: Senator Cedillo.  
16 SENATOR CEDILLO: (Nods head.)  
17 MS. BROWN: Cedillo aye.  
18 SENATOR CEDILLO: Aye.  
19 MS. BROWN: Dutton.  
20 SENATOR DUTTON: Aye.  
21 MS. BROWN: Dutton aye.  
22 Oropeza.  
23 SENATOR OROPEZA: Aye.  
24 MS. BROWN: Oropeza aye.  
25 Aanestad.


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1 Oropeza.  
2 SENATOR OROPEZA: Aye.  
3 MS. BROWN: Oropeza aye.  
4 Aanestad.  
5 SENATOR AANESTAD: Aye.  
6 MS. BROWN: Aanestad aye.  
7 Steinberg.  
8 CHAIRMAN STEINBERG: Aye.  
9 MS. BROWN: Steinberg aye.  
10 CHAIRMAN STEINBERG: That passes.  
11 (Thereupon, the Senate Rules Committee hearing  
12 adjourned at 3:52 p.m.)  
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1 SENATOR AANESTAD: Aye.  
2 MS. BROWN: Aanestad aye.  
3 Steinberg.  
4 CHAIRMAN STEINBERG: Aye.  
5 MS. BROWN: Steinberg aye.  
6 CHAIRMAN STEINBERG: Congratulations.  
7 MS. DUNN: Thank you.  
8 CHAIRMAN STEINBERG: The nomination will now  
9 move to the floor.  
10 MS. DUNN: Thank you.  
11 CHAIRMAN STEINBERG: All righty. Let's move  
12 through the rest of this agenda quickly.  
13 We've dealt with items one, two, and three.  
14 Are there any questions on items four through 11? If  
15 not, let's take them as a block.  
16 Motion on items four through 11.  
17 SENATOR AANESTAD: So moved.  
18 CHAIRMAN STEINBERG: Moved by Senator Aanestad.  
19 Please call the roll.  
20 MS. BROWN: Senator Cedillo.  
21 SENATOR CEDILLO: Aye.  
22 MS. BROWN: Cedillo aye.  
23 Dutton.  
24 SENATOR DUTTON: Aye.  
25 MS. BROWN: Dutton aye.

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1 --oOo--  
2 I, INA C. LeBLANC, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify  
4 that I am a disinterested person herein; that the  
5 foregoing transcript of the Senate Rules Committee  
6 hearing was reported verbatim in shorthand by me,  
7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.  
10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in  
12 any way interested in the outcome of said hearing.  
13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 27th day of April, 2009.  
15  
16  
17   
18 INA C. LeBLANC  
19 CSR No. 6713  
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APPENDIX

## BENCHMARKS FOR ADULT PROGRAMS

At the request of Senator Darrell Steinberg, and as part of Secretary Cate's confirmation process, CDCR recommends the following benchmarks and targets be used to measure our progress in the following areas:

- Academic Education.
- Vocational Education.
- Literacy.
- Substance Abuse.
- Mental Health Services.

The following measures are consistent with those that will ultimately be identified as part of the Secretary's key performance indicators and strategic planning outcomes.

Please note that the table below presents a more detailed description of the current status of programming occurring within CDCR's adult institutions. (Data is based on an initial inventory of programs by institution, which was conducted in the Fall 2008, which we are in the process of validating.)

PROGRAM TYPE	ENROLLMENTS ESTIMATED MONTHLY FOR 12/08
Traditional Academic	13,695
Vocation	9,373
Independent Study	4,931
Distance Learning	4,505
College	5,295
Literacy	3,422
Other (pre-release, etc)	1,389
<b>Sub-Total</b>	<b>42,610</b>
PIA	5,936
Support Groups and Other Volunteer Programs	20,346
<b>Sub-Total</b>	<b>26,282</b>
In-Prison Substance Abuse Programs	9,472
<b>TOTAL<sup>1</sup></b>	<b>78,364</b>

\* The numbers above do not include the "Bridging Education" program, which had an enrollment of 14,634, as of December 2008.

<sup>1</sup> These numbers do not include inmates participating in programs in contracted facilities. Based on CDCR's current contracts, there are approximately 5,631 inmates participating in academic, vocational, rehabilitation, substance abuse or work programs in out-of-state facilities. An additional 733 inmates are participating in programs in the in-state correctional care facilities (CCFs).



Notes:

- Based on at least 85,000 COMPAS assessments, approximately 55 percent of inmates have a moderate to high academic/vocational need and approximately 60 percent have a moderate-to-high substance abuse need.

## TRADITIONAL ACADEMIC EDUCATION

Outcome	FY 05/06	FY 06/07	FY 07/08	FY 08/09 (thru 12/31/ 08)**	% Increase	Target 6/30/09	Target 6/30/10	% Increase Since FY 05/06
						<i>(Based on existing resources only.)</i>		
<b>Enrollment</b>	10,572	12,075 +14%	14,347 +19%	14,487 +1%	37% since 05/06	Full-Day 14,649	Full-Day 15,837	Full-Day 50%
						Half-Day 14,811	Half-Day 17,187	Half-Day 63%
<b>Participation Rate*</b>	42%	49%	61%	68%	26% point increase since 05/06	70%	78%	36% point

\*Consistent with the AB 900 benchmarks, which require an increase in participation in academic and vocational programs by 10 percent from the levels on April 1, 2007, CDCR has focused on increasing the participation rate. CDCR has met the benchmark. "Participation Rate" = hours of participation vs. total hours available.

\*\* This number is different than the one provided on the front page, because that number was based on a point-in-time count, and this number 's average enrollment for December 2008.

### Notes on Traditional Academic Programs

- At the recommendation of the Expert Panel, CDCR decided to focus on increasing utilization of existing resources before asking the Legislature to fund the expansion of additional programs (participation rates were as low as 40 percent).
  - As a result of this focus, CDCR has made significant improvements in participation and originally had set a goal of 75 percent participation (i.e., attendance) for both education and vocational programs by June 30, 2009. More recently, this has been revised to 70 percent for academic programs and 65 percent for vocational programs (as indicated in the chart above) mostly due to delays caused by budget issues.
- Now CDCR will be able to increase enrollment (i.e., program slots) by assigning vacant teacher positions to classrooms.
  - Within the next 15 months, we will be able to add approximately 50 more teachers to academic classrooms. (The number of enrollees this will add depends on whether we can do half-day programs [approximately 2,700 vs. 1,350 enrollees] at all of those locations.) CDCR is also adding 41 substitute teachers to help further increase participation at existing programs.



- Challenges with half-day programming include: additional client movement (problem for Division of Adult Institutions), start up costs for new classes, and requires working with labor organizations.

## VOCATIONAL EDUCATION

Outcome	FY 05/06	FY 06/07	FY 07/08	FY 08/09 (thru 12/31/ 08)	% Increase	Target 6/30/09	Target 6/30/10	% Increase Since FY 05/06
						(Based on existing resources only.)		
Enrollment	7,853	8,782 +12%	9,132 +4%	9,399 +2%	20% since 05/06	Full-Day 9 642	Full-Day 10,020	Full-Day 28%
						Half-Day 9,885	Half-Day 10,641	Half-Day 36%
Participation Rate*	42%	44%	55%	62%	20% point increase since 05/06	65%	72%	30% point

\*Consistent with the AB 900 Benchmarks, which require an increase in participation in academic and vocational programs by 10 percent from the levels on April 1, 2007, CDCR has focused on increasing the participation rate. CDCR has met the benchmark. "Participation Rate" = hours of participation vs. total hours available.

### Notes on Vocational Programs

- Similar to the discussion about academic programs, CDCR has been focusing on increasing utilization first. As noted, we had set a goal of 75 percent participation (i.e., attendance) for both education and vocation programs by June 30, 2009, but this has been revised to 70 percent and 65 percent, respectively.
- As with the academic programs, CDCR will use current vacancies to increase enrollment (i.e., program slots). Within the next 15 months, we will be able to add approximately 23 more vocational programs as a result of these vacancies. (The number of enrollees this will add depends on whether we can do half-day programs [approximately 1,242 vs. 621 enrollees] at all of those locations.)
  - This is a little more complicated for vocational programs in part because the start-up costs are more significant (i.e., \$400,000 vs. \$150,000).
- CDCR has conducted a thorough assessment of the labor market in the counties to which our inmates parole (by institution) and is using this information to add new



vocational programs, as well as to take down programs that are no longer recommended based on labor market assessments.

## LITERACY

Outcome	As of 12/08	Target 6/30/09	Target 6/30/10	% Increase Since 12/08
Number of Tutors	628	700	1,200	91%
Number of Literacy Students	3,422	5,000	7,500	119%

### Notes on Literacy Programs

- CDCR will use the Comprehensive Adult Student Assessment System (CASAS) pre- and post-tests to measure "learning gains" and establish performance benchmarks to measure progress. Typically, a "learning gain" for an average student equates to 120 hours. These benchmarks are not indicated here because they still need to be validated.
  - Unlike traditional academic programs, which are measured by improvements in grade level, literacy programs are measured by "learning gains." This is largely due to the fact that the Test of Adult Basic Education (TABE) test (which assesses grade level) cannot be given more than every six months. Learning gains, measured by CASAS, represent functional learning gains (e.g., able to fill out basic forms; read directions, signs, maps, etc.)
- CDCR is going to use 33 of its vacant teacher positions as literacy coordinators at each institution to focus on expanding this program significantly.
- CDCR is coordinating with County Literacy Councils to provide training to our inmate tutors and "train the trainers" for our Literacy Coordinators. (No cost to the State).
  - Program has been modeled with the San Luis Obispo Literacy Council at California Men's Colony (CMC).
- CDCR will target efforts initially to inmates who need this the most, as follows:
  - 0-3.9 grade: 19,801 inmates (*first priority*)
  - 4.0-6.9 grade: 31,560 inmates

**Total**                      **51,361**, less those already in literacy program = 47,939

  - These estimations are based on 85 percent of the inmate population with a TABE test adjusted for the remaining 15 percent.
  - As we continue to develop this model, we will be able to measure ourselves in terms of how well we are addressing the need (i.e., learning gains among inmates who most need a literacy program).



- Over the last few years, CDCR has been acknowledged by the federal government for significant improvements in learning gains among in our literacy programs.
  - Between FY 05/06 and FY 07/08, CDCR's learning gains increased from just over 20,000 to almost 30,000. These gains have resulted in significant increases in federal Workforce Investment Act funding, (i.e., an increase of almost \$500,000 over the past three years, and an increase of almost \$3 million since FY 01/02). Additionally, specific programs, for example at California Correctional Institution (CCI) and CMC, have received awards of excellence.

## SUBSTANCE ABUSE

### In-Prison Substance Abuse Programs (SAP)

Outcome	7/1/05	7/1/08	% Increase Since 7/1/05	Target 7/1/09	Target 6/30/10	% Increase Since 7/1/05
Treatment Slots	8,900	9,869	11%	12,000	12,500	40%
Participants Served	20,238	24,557	21%	n/a	n/a	
Program "Completions"	6,625	10,005	51%	11,000	12,000	82%

Note: The number of completions may exceed the number of treatment slots, because more than one participant may complete the program, per slot, in a given year. CDCR is in the process of improving its ability to define and track completions per participant. Until we are able to do this, we cannot project an increase in participants served, as this number would be affected as we improve our rate of completion. Completion from in-prison SAP is currently defined as an inmate who paroled directly from a SAP regardless of their length in the program, as long as the provider determines they are ready for aftercare.

- Since the Office of the Inspector General's (OIG) report on problems with CDCR's substance abuse programs, CDCR has reduced the hours of substance abuse programming time lost due to lockdowns from a monthly average of 600 hours during FY 05/06 to 320 hours through February 2009. This is a decrease in the amount of lost time of 47 percent.
- The "show-up" rate for continuing care for those offenders completing the in-prison SAP has also increased from 42 percent in FY 05/06 to approximately 55 percent in FY 07/08.

### Continuing Care (in-Community) Substance Abuse Programs

Outcome	7/1/05	7/1/08	% Increase Since 7/1/05	Target 7/1/09	Target 6/30/10	% Increase Since 7/1/05
Treatment Slots	3,280	5,600	71%	6,600	6,850	108%
Participants Served	7,345	25,983	254%	n/a	n/a	
Program "Completions"	3,389	12,037	255%	14,000	14,500	326%

Note: As with the figures above, the number of participants may far exceed the number of treatment slots as more than one person goes through a program bed per year. Because CDCR is in the process of determining how to improve utilization of these programs, we are



unable to project an increase in participants served at this time. In the case of continuing care, "completion" varies by program and is determined by the provider.

- We are pleased to report that the 24-month return-to-custody (RTC) rate\* for offenders who completed both the in-prison and a continuing care program, and were released for the first time in 2005 is 40.4 percent for males, compared to 55.6 percent for all paroled male felons released during the same time period. The rate for females is 16.5 percent; compared to 42.8 percent for all paroled female felons released from prison for the first time in 2005.

\* Return-to-Custody Rate = the percent of inmates who complete the in-prison and continuing care program, and are returned to prison within two years (either through a parole violation or a new admission).

### **Notes on Substance Abuse Programs**

- Determining the target number for in-prison treatment capacity: CDCR has been working with UC San Diego to determine the appropriate capacity for in-prison beds. After excluding almost 80,000 inmates who would not be eligible to participate in the SAP program (i.e., ICE holds, condemned inmates, sex offenders, and some enhanced outpatient inmates, who are unable to participate) there are approximately 92,000 offenders who are eligible for SAP. However, approximately 30,000 of these offenders are low-risk to reoffend and therefore will not be targeted for services. Our initial assessment data indicates that approximately 60 percent of the remaining inmates have a moderate to high need for substance abuse services, which equates to a target need of approximately 37,000.
- If we effectively reduce the length of the program (i.e., SAP inmates do not need to be there as long as they are currently), we can increase annual participants served significantly. For example, if we reduced the average length of stay from the existing 9 months to 6 months (30 percent decrease), the number of participants projected to be served by July 1, 2009 would increase from 25,700 to 33,410 participants. (Note: This approach would have to be aligned with the clinical assessments for effective evidence-based programming.)
- CDCR is also exploring a way to maximize program utilization by placing SAP eligible inmates into treatment beds prior to their last 12 months of incarceration. This will allow us to begin providing treatment to more inmates who need it, allowing them to return to general population yards and take advantage of Alcoholics Anonymous and Narcotics Anonymous programs, and go back into SAP to complete the program approximately 6 months before their release.
- In the meantime, CDCR has also begun working with community providers to increase the availability of programs for moderate and higher risk parolees (i.e., those who most need the services). We expect to be re-tooling some of these programs as a result of parole reforms.





### SERVICES FOR MENTALLY ILL PAROLEES & INMATES

Outcome	FY 05/06	As of 12/1/08	Target 6/30/09	Target 6/30/10
<b>Mentally Ill Parolees Receiving Wraparound Services (Adult Systems of Care)*</b>	0	0	Contracts in place 6/1/09	300

\* AB 900 Benchmark requires that at least 300 parolees are being served in day treatment or crisis care services. CDCR anticipates meeting this benchmark by October 2009.

#### Notes on Services for Mentally Ill Parolees

- As part of the FY 08/09 Budget Act, CDCR received funding to issue a Request for Proposals (RFP) for more comprehensive rehabilitative services for mentally ill parolees. CDCR posted the RFP in January 2009, and expects to enter into contracts with the selected providers by June 1, 2009.
- In addition to the wraparound services identified above, CDCR also has Parole Outpatient Clinics (POC) in each of the four parole regions. Over 22,000 mentally ill parolees have been provided services at these clinics this fiscal year (through February 2009). CDCR currently has approximately 248 POC positions filled, of which 231 are clinicians.
  - As of October 1, 2000, all inmates designated as enhanced outpatient program (EOP) and Correctional Clinical Case Management System (CCCMS) eligible are required to attend POC upon their release to parole.
  - On February 5, 2007, the Division of Adult Parole Operations (DAPO) implemented a new program to assist in recidivism reduction by providing increased frequency of clinical services to mentally ill parolees upon parole from prison. Upon parole, inmates designated as:
    - EOP are scheduled for 8 consecutive POC appointments which occur within 90 days of release from incarceration.
    - CCCMS parolees are scheduled for 4 consecutive POC appointments which occur within 60 days of release from incarceration.
    - At completion of the initial POC appointments that mentally ill parolees attend upon parole, the frequency and duration of continued outpatient mental health treatment is determined by POC clinical staff.

- In addition, parolees that do not fall under either of these categories can be referred for an evaluation for services by the POC based on a parole agent's recommendation.

This enhancement was approved as a result of evidence-based research conducted by the University of California, Los Angeles (UCLA), Integrated Substance Abuse Programs. The UCLA research revealed a strong positive relationship between the number of POC sessions attended and recidivism risk. Specifically, the greater number of POC contacts a mentally ill parolee has, the less likely he or she is returned to prison, and that enhancing retention in the program would further reduce recidivism outcomes.

#### Notes of Services for Mentally Ill Inmates

- As part of the *Coleman* litigation, CDCR has until May 26, 2009 to file a revised "bed plan" with the court. This bed plan will outline CDCR's plan to provide mental health beds and treatment space for inmates in need of mental health services at the following levels of care:
  - EOP.
  - CCCMS.
  - Intermediate care facility and acute care (ICF).

Level of Care	June 2006	June 2008	Target
CCCMS	27,465	28,668	TBD based on mental health bed plan due in court 5/26/09
EOP	4,311	4,946	Same as above
ICF	259	445	Same as above

Please note: Numbers are not exactly comparable because of changes in data collection between 2006 and 2008. Also, timeframes are approximate as some data is reported on a weekly basis (i.e., ICF data for June 30, 2008 is from the weekly report of 7/2/08).



*[The body of the page contains extremely faint, illegible text, likely bleed-through from the reverse side of the paper. The text is organized into several paragraphs and possibly a list or table, but the characters are too light to transcribe accurately.]*

BOB ALVARADO, Chair  
JAMES EARP, Vice Chair  
JOHN CHALKER  
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DARIO FROMMER  
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ARNOLD SCHWARZENEGGER  
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ASSEMBLYMAN MIKE ENG, Ex Officio

ANDRE BOUTROS, Interim Executive Director

## CALIFORNIA TRANSPORTATION COMMISSION

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Lucy Dunn  
Responses

April 8, 2009

Mrs. Nettie Sabelhaus  
Senate Rules Committee Appointments Director  
State Capitol, Room 420  
Sacramento, CA 95814

**Senate Rules Committee**

APR 08 2009

**Appointments**

Dear Mrs. Sabelhaus:

I am pleased to provide a response to the questions posed March 19, 2009 for my upcoming confirmation hearing, now scheduled for April 22, for appointment to the California Transportation Commission (CTC). Also enclosed is an updated Form 700 as requested.

### Statement of Goals

CTC is responsible for programming and allocating funds for highway, passenger rail, and transit construction and improvement projects throughout the state. The commission also advises the Legislature and the Secretary of the Business, Transportation and Housing Agency on transportation policy and programs.

1. *What goals and objectives do you hope to accomplish during your tenure as a member of CTC? How should we measure your success?*

As a member of the CTC, my first duty would be to assist the Commission achieve its goals and objectives to ensure safety, mobility and a clean environment for California's residents and visitors. For 2009, those include: implementing Proposition 1B, facilitating economic stimulus (ARRA), incorporating AB 32 and SB 375 into transportation, focused funding on rehabilitation, repair and maintenance of existing infrastructure, and helping to resolve the state's budget crises. I aspire, with my fellow commissioners, to serve as a resource to the administration and Legislature to meet the transportation needs of California and with it, a stable economic recovery. In addition, CTC must accommodate the current and future mobility needs of the state's residents with a careful eye towards protecting California's resources and environment. The Commission must ensure that reasonable expectations for the programming and funding of



transportation projects are in place. The need far outpaces the funding, so CTC must partner with the regions and Caltrans in innovative ways to provide vital transportation services and infrastructure to the state in a time of scarce resources.

Consistent with the goals of the Commission itself, my personal goals include providing advocacy, encouraging innovation, and implementing or maintaining accountability.

Advocacy will include:

- Protection and timely release of available funding sources.
- Oversight and delivery of 1B commitments and pursuit of new funding sources.
- Coordinated representation of California's transportation interests in the development of the next federal transportation act.
- Support for local option transportation funding measures

Innovation:

- Encourage implementation of new highway traffic operation and management strategies, such as open access HOV and HOT lanes.
- Support alternative project delivery methods authorized per SBX2 4.
- Support the evolution of toll operations and financing to augment existing state transportation funding.
- Promote active planning efforts in response to SB 375 and AB 32 mandates.
- Encourage integrated rail transit including regional commuter rail services as well as future high-speed rail services.
- Promote creative strategies for expediting project delivery and funding.

Accountability:

- Protect state transportation infrastructure by insuring that SHOPP projects are delivered on time and on budget.
- Maximize California's investment in state-sponsored rail services.
- Streamline project delivery process without compromising oversight.
- Assuring transparency and accountability in ARRA funding for infrastructure

Success can be measured by on-time, on-budget delivery of new and existing projects throughout the state and the increase of partnerships developed to leverage limited transportation dollars.

**2. *What experience do you bring that will be helpful to CTC?***

I have almost 20 years in land use, environmental planning and land entitlement experience working with most state and federal agencies which may be helpful to the CTC as it begins to assess projects in light of the new land planning rules under AB 32 and SB 375. My experience as California's Director of Housing and Community Development will be helpful as Sustainable Communities Strategies are developed across the state in planning both housing and transportation as required under these new laws. As HCD Director, I was required

to account for and efficiently use Prop 46 bond dollars, similar to the accountability required now by CTC for Prop 1B and federal economic stimulus dollars.

Orange County is the 5<sup>th</sup> largest county in the nation—with more population in its mere 798 square miles than in 22 states in the union. Even so, almost 50% of this county is public land, open space, agriculture or uncommitted—a balance of urban and public uses. My experience in the business community and as a resident of Orange County helps me recognize the importance of sustainable infrastructure funding, project accountability, goods movement, investment in transit and innovations so that California has an ample arsenal of viable transportation options for its growing population to ensure a thriving economy, and protective of the environment. I have leadership experience in helping to pass the renewal of Measure M—Orange County's local sales tax extension for transportation—and oversight review in implementation which is helpful to the CTC in aligning local funding needs to leverage finite state funding opportunities.

Finally, I welcome the opportunity to bring enthusiasm, strategic thinking, and team approaches to helping CTC tackle the tough policy issues that face the state's transportation system.

**3. *In a difficult economy and a time of significant state budget reductions, how do you, as a member of CTC, help the state meet its transportation needs within existing scarce resources?***

CTC can be a partner with regional agencies to ensure projects keep moving and are delivered; creating jobs that will help the state recover more quickly from the economic downturn. The Commission can also promote innovative programming and project delivery methods uniquely crafted for regions in tough times. CTC will implement the recently passed public private partnership legislation by selecting the most viable and high demand projects to utilize public private partnership and/or design build methods to ensure success.

CTC can support self help counties to incentivize local support for current and future ballot measures for transportation. Self help counties account for more than 50% of the funding for transportation projects in the state, a number that will only grow as state resources remain scarce. CTC should make every effort to partner with self help counties to deliver projects and stretch the state's dollars even further.

CTC should follow the example set by the federal economic stimulus plan and most immediately focus on job creation and projects that can be delivered quickly in order to help the state's overall economic recovery and hopefully free up additional resources for projects in the future.

The Commission can work with partnering agencies to ensure that projects funded through the State Transportation Improvement Program (STIP) proceed in the most efficient manner possible and that the partnering agencies are accountable for the funds they spend on needed transportation projects.



4. *On January 15, 2009, Executive Director John Barna tendered his resignation effective at the end of February. What is CTC's plan to find a successor? If a successor is not appointed before Mr. Barna leaves, what is the interim plan for fulfilling his role and ensuring that the work of the commission is not interrupted?*

Prior to Executive Director John Barna's departure from the Commission on February 27, the Commission appointed the Commission's Chief Deputy Director Andre Boutros as Interim Executive Director. Mr. Boutros's interim appointment has resulted in the work of the Commission not being interrupted, and the progress and strategic plans made for the near-term have been followed through.

As Commission members are responsible for the appointment of the Executive Director, a special committee to interview applicants was formed. The interviews were held at the end of March and the committee provided a report on the interview results at the Commission's April 1 meeting during closed session. With a unanimous vote of support, the Commission announced the appointment of Ms. Bimla Rhinehart of Caltrans as its new Executive Director. Because of Ms. Rhinehart's substantial experience in transportation and special knowledge of CTC, the Commission does not anticipate any interruption in workflow. Ms. Rhinehart will begin her new role on April 13, 2009.

#### **Prop 1B**

Two years ago, voters approved Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. CTC is responsible for allocating Prop 1B funds for 8 of the 14 programs funded by the bond. Of the \$5.8 billion appropriated to CTC to date, the commission has allocated nearly \$5 billion to project sponsors. Guidelines for the only program for which CTC has not allocated any funds, the State-Local Partnership Program, were adopted on December 11, 2008—the program is expected to be in place by April 2009.

5. *Do you have any suggestions for statutory changes needed to better implement Prop 1B or future infrastructure bond legislation?*

The State's fiscal crises caused the Pooled Money Investment Board to freeze new bond issuance, which delayed implementation of the state's "shovel-ready" projects during this economic downturn when jobs are needed most. Suggestions for consideration by the Legislature might include authorization for designated bond fund recipients to expend their own funds in advance of such an allocation with right of reimbursement. This program, and others unique to this time, could help keep projects moving and folks employed.

Absent flexibility needed during this extraordinary economic climate, statutory changes to Proposition 1B are not necessary. What is necessary is stable, reliable, growing funding sources for transportation that enable project sponsors to bring their projects forward for Proposition 1B funding.

In its 2006 and 2007 annual reports the Commission recommended that the Legislature convene a blue-ribbon transportation funding task force to examine options for enhancing transportation revenues and to consider additional ways to raise revenue. An added impetus to establish a dedicated, special funding source is that the Federal Highway Trust Fund will likely not have enough resources to meet all of its obligations by the end of the decade.

In 2009 and beyond, the challenge will be delivering ready-to-go projects. Proposition 1B infrastructure projects, along with other transportation projects, require funding from a variety of sources, including state funds such as the State Transportation Improvement Program, and federal and local funds. When state funding sources are suspended, projects must be delayed, or if available, other funding sources need to be used to keep the projects going. This has a domino effect with the Department of Transportation (Caltrans) and regional agencies taking funding from one project to complete another, delaying the project that the funding was originally committed to.

#### **Infrastructure Spending Freeze**

According to CTC's 2008 annual report to the Legislature, "A lack of bond proceeds may result in the Commission reevaluating how much Proposition 1B funding can be allocated for the balance of the 2008–09 year, and beyond."

Because of the state's poor fiscal condition, on December 17, 2008, the Pooled Money Investment Board (PMIB) froze \$3.8 billion in financing for infrastructure projects across the state. The Department of Finance released a list of 5,600 infrastructure projects affected by the decision. On January 16, 2009, citing the slightly improved bond market, PMIB partially undid the freeze by approving \$650 million in spending on infrastructure projects through June 30. The Department of Finance was designated to decide how to allocate these funds.

**6. *How have the recent PMIB actions affected the commission's efforts to implement Prop 1B? How many projects are affected?***

The \$650 million approved by PMIB in January 2009 will allow 98 bond-funded transportation projects with awarded construction contracts before December 17, 2008 to proceed. Bond funding allocated by the Commission for these projects total \$1.569 billion: 39 Caltrans awarded contracts for highway and intercity rail projects totaling \$1.393 and 53 local agency awarded contracts for on-state highway system, local bridge seismic and other projects totaling \$176 million.

57 projects that received an allocation by the Commission were not considered for an exemption as these projects had not yet awarded a construction contract by December 17, 2008. These projects include 14 Caltrans highway and intercity rail projects totaling \$429 million in bond funding and 43 local agency projects on and off the highway system totaling \$860 million in



bond funding. The Commission and Caltrans strongly suggested that contracts not be entered into or that any other commitments that required Proposition 1B funds not be made.

In January and February of 2009, an additional 12 projects funded by Proposition 1B bond have come before the Commission for an allocation. The Commission has deferred these requests. This represents \$305 million worth of projects that are currently on hold.

In March 2009, the State Treasurer successfully sold \$6.5 billion in bonds for state general obligation purposes. Of these proceeds, \$3.87 billion were used to pay down outstanding loan disbursements, and the remaining \$2.67 billion will be used to provide direct upfront financing for eligible projects. A prioritization process was established by the Department of Finance on April 3, 2009, which will result in funding all but two of the 57 projects already allocated by the Commission.

There is significant uncertainty at this time regarding how and when additional bond funded projects will move forward. The Commission continues to defer allocations for new projects until assurances are in place that bond funds are available and can be committed to these projects. Lack of funding would negatively impact project baseline agreement schedules for bond funded projects currently programmed, and would fail to provide needed economic stimulus through increased construction activity. The Legislature charged the Commission with monitoring and oversight of these projects which at this time cannot move forward because of the uncertainty of state funding commitments.

**7. *How is CTC determining which projects will move forward and which will be delayed?***

Any re-evaluation by the Commission will be done through a consensus effort with Caltrans and the regional agencies as has been done in the past when state transportation funding has been suspended.

**Federal Economic Stimulus**

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA), the federal economic stimulus legislation. The ARRA is a \$787 billion stimulus package that provides aid to states, tax benefits to individuals and corporations, and invests in job-creating public-sector programs and infrastructure. Among other benefits to California, the Act may provide as much as \$4.4 billion to the state for a variety of transportation-related improvements. Legislation (ABx3, Bass) is now pending in the state Legislature that would direct the use of the first \$2.6 billion made available to the state from the ARRA.

**8. *Please identify the projects or programs that CTC and Caltrans have targeted to receive federal stimulus dollars. What criteria are being used to determine which projects or programs receive priority?***

On Friday, March 27, 2009, the Governor signed ABX3-20, which affects the distribution of the federal transportation economic stimulus funds and removes stimulus funding from the STIP formula process.

The bill provides 37.5% of the funds to be programmed by Caltrans for allocation by the Commission for the State Highway Operations and Protection Program (SHOPP), and for 62.5% of the funds to be apportioned to the regional agencies based on the existing formula for allocation of federal Regional Surface Transportation Program. A portion of these funds must be programmed and allocated for transportation enhancement activities.

The bill requires Caltrans to program a minimum of \$935 million for projects in the SHOPP. The Commission allocated \$575 million of the \$935 million in stimulus funding to Caltrans at its March 11-12, 2009 meeting for 56 SHOPP projects. In addition, the bill authorizes that not more than \$310 million of those funds could be temporarily loaned by Caltrans to advance Proposition 1B funded projects that meet certain requirements. On April 1, 2009, the Commission allocated approximately \$1.6 billion or approximately 63% of the funds, from ABX3-20 in a lump sum allocation to the Caltrans to then sub-allocate funds to the local agencies based on the requirements of the legislation.

To the extent possible, the Commission could encourage the regions to use their regional ARRA funds on Proposition 1B projects where practical. AB X3-20 provides that the Commission will allocate bond funds for one or more qualifying projects in the jurisdiction of a regional agency that uses stimulus funds to deliver a Proposition 1B project, and in the same amount of the displaced bond funds. By offering the regions some flexibility for the use of the programmed Proposition 1B funds, this would provide the only opportunity for the Commission to encourage how ARRA funds could be used by the regions under AB X3-20.

**9. *How would you propose the state focus these federal economic stimulus funds for transportation?***

As previously stated in Question 8 above, the Commission would follow the formula plan according to the Legislative intent of ABX3-20. Before passage of this Legislation, the Commission considered a prioritization policy based upon the federal priorities of jobs creation at the state and local levels and moving projects to construction as quickly as possible.

**10. *Outside of the \$2.6 billion made available to the state under the federal highway program, what are the next important steps policymakers should take to compete for additional federal transportation funds provided for in the ARRA?***

The state has two potential options for receiving additional federal highway program funding through ARRA. The state can receive discretionary funds and it can receive funding that was returned to the FHWA because other states were unable to obligate funds under the timely use of funds requirement or meet other requirements of ARRA.



Staying aligned to the statute and the intent of the Legislature, it is imperative that California remain competitive by ensuring all federal funds are obligated by the timelines listed in the stimulus bill. By June 1, 2009 the funds are required to be obligated within 120 days of federal apportionment. By February 1, 2010 a list should be produced describing any funds that will not be obligated within one year of federal apportionment. The bill enacts reporting requirements and other related provisions for metropolitan planning organizations, county transportation commissions, or regional transportation agencies that sub-allocate funds to cities and counties. These entities must report to Caltrans the projected amount of obligational authority they intend to use. Each of these entities must report the same information and reports to Federal Highway Administration (FHWA) as the Department within the same timelines required by the FHWA or federal law. Policymakers must ensure that these entities are proactive in their reporting requirements and can monitor progress through the reports the Department is required to compile and submit to the transportation budget committees and transportation policy committees. California is put in the best position for future federal funding if it can fully comply with and obligate 100% of the federal funds.

State collaboration among Caltrans and the regions would also offer strong competition to programs submitted by other states for discretionary ARRA funds.

#### **Transportation in a Post-AB 32 World**

Two years ago, the Legislature passed and the Governor signed landmark legislation, AB 32 (Núñez), Chapter 488, Statutes of 2006, to limit the emission of greenhouse gases in California. Last year, after extensive negotiations, the Legislature passed and the Governor signed legislation intended to implement AB 32. SB 375 (Steinberg), Chapter 728, Statutes of 2008, aims to align planning for housing, land use, transportation, and greenhouse gas emissions for the 17 metropolitan planning organizations across the state. Among other things, SB 375 requires CTC to maintain guidelines for travel-demand models used in the development of regional transportation plans.

The commission's annual report to the Legislature states that "without reliable, sustainable, and increased transportation funding in the next decade the transportation community will not meet its AB 32 reduction targets." On January 14, 2009, Commissioner R. Kirk Lindsey appeared before Senate Rules Committee for his confirmation hearing. At that time, he was asked whether the commission had begun working on travel-demand models pursuant to AB 32 and SB 375. Commissioner Lindsey stated that since the commission had not received any new funds, it had not implemented any new programs. The committee expressed a desire to see, regardless of any fiscal difficulties, an aggressive timeline plan for travel-demand model guidelines.

11. *What is CTC doing to implement the requirements of SB 375? Specifically, has the commission begun assessing travel-demand models in an effort to have those models better respond to land use decisions? Please discuss the timeline for these efforts.*

Subsequent to the passage of SB 375, staff has participated in various staff level meetings with the California Air Resources Board (CARB), the Department of Transportation (Caltrans), the Department of Housing and Community Development, the Governor's Office of Planning and Research, and the California Energy Commission to develop a coordinated approach in implementation of the requirements of SB 375. Commission staff has also attended the CARB Regional Targets Advisory Committee (RTAC) meetings.

SB 375 requires the Commission, in consultation with Caltrans and CARB, to maintain guidelines for travel demand models used in the development of regional transportation plans by federally designated metropolitan planning organizations. SB 375 also requires the Commission to form an advisory committee, or a workgroup, and hold two workshops, incorporated into regular commission meetings, to discuss any proposed revisions to the guidelines.

The Commission is incorporating the counsel of a modeling work group that Caltrans, Air Resources Board and the CTC have with the best travel-demand modeling minds among the municipal planning organizations (MPO's), the private sector and academia. The travel-demand model experts have suggested to the Commission that the modeling elements of the 2008 addendum to the 2007 Regional Transportation Plan (RTP) Guidelines are sufficient to incorporating initial AB 32/SB 375 issues. The work group clearly expects that the SB 375 RTAC will develop recommendations that will enhance the existing modeling elements. In short, the commission anticipates the need for enhanced modeling among regional agencies and is working with the best travel-demand modeling experts in California to ensure that future transportation programs are based on the best modeling available.

Nevertheless, to fully implement SB 375, the Commission will need to update its 2007 Regional Transportation Plan (RTP) Guidelines as amended in 2008. Commission staff will be recommending at the Commission's April 15-16, 2009 meeting that a workgroup be formed in the summer of 2009 and estimates that the update should be ready for consideration by the Commission at the end of this calendar year.

The workgroup for updating the RTP Guidelines would include interested representatives from the staff of the Assembly and Senate, Metropolitan Planning Organizations (MPO), Regional Transportation Planning Agencies (RTPA), state and federal agencies, environmental interest groups, building and industry organizations and county and city associations.

It is expected that the RTP Guidelines update will include guidance with respect to sustainable communities strategies designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in each region. For example, in addition to modeling, information with respect to alternative land use decisions, modal choices, and infrastructure as well as development of corridor system management plans may need to be added and/or updated in the RTP Guidelines.

The proposed timeframe to establish an RTP Guidelines workgroup recognizes that there are concurrent activities with regard to SB 375 implementation that may have implications to an



RTP Guideline update. For example, the RTAC is currently in the process of developing factors and methodologies for setting greenhouse gas emission targets that will be provided to CARB no later than September 30, 2009; legislation is underway to address various aspects of SB 375 that may impact implementation efforts; and the Strategic Growth Council was recently formed to help state agencies allocate strategic growth plan money in ways that best promote efficiency, sustainability and support the Governor's economic and environmental goals.

***12. Given the climate change goals of AB 32 and SB 375, as well as evidence of the negative health effects of air pollution from mobile sources, how do you recommend incorporating air quality and climate change concerns into the planning and programming of transportation projects?***

In 2007, CTC proactively responded to the requirements of AB 32 by updating the RTP guidelines to include additional considerations for greenhouse gas emissions. New air quality concerns and climate issues will be incorporated into the RTP Guidelines as part of the effort described in Question 11 above for SB 375 requirements. CTC also incorporated additional environmental considerations into the project list development process for many Proposition 1B categories.

AB32 and SB 375 are having widespread impacts at the regional planning level and will need to be considered in any transportation planning or programming document in the future as required by law. The Commission can assist in these efforts by considering these requirements in reviewing projects' environmental review documents.

**High-Occupancy Vehicle Lanes, Toll Roads, and High-Occupancy Toll Lanes**

California has made various attempts to address increasing traffic congestion on the State's freeways and highways. High-occupancy vehicle (HOV) lanes, commonly known as carpool lanes or diamond lanes, allow vehicles with a certain number of passengers—including public transit buses—to use a separate lane at peak traffic times. To address underutilization of HOV lanes, legislation was passed allowing single-occupancy vehicles to use HOV lanes for a fee. The Legislature has also authorized Caltrans to enter into contractual agreements with private entities to finance, build, and operate toll roads. To date, only two projects, in Orange and San Diego counties, have been built pursuant to this authority.

In addition to reducing traffic congestion, HOT lanes generate revenue to help build, operate, and maintain toll road facilities and transportation corridors. Critics charge that HOT lanes are really "Lexus lanes" because only motorists who can afford to pay can use them. Concerns have also been expressed that ongoing improvements may become concentrated in the toll lanes. Supporters argue that drivers who are familiar with congestion pricing—even low-income drivers—support facilities such as HOT lanes because they offer a reliable trip time.

***13. How would you assess the state's current policy as it relates to toll facilities and other pricing strategies in our transportation system?***

The state's current policies have improved in the recent past and with several new options for moving forward on additional toll projects, California will be well positioned to begin a true assessment of how these facilities can work in this state. With the state including additional public-private partnership authority in the recent budget agreement, the Commission will have a significant role in selecting projects that provide the greatest benefits and have the greatest chance of success. In addition, previously approved projects such as the AB 1467, related projects on along various freeway segments in Los Angeles, as well as new toll lanes on the I-15 in Riverside County and the extension of the 91 Express Lanes into Riverside County through SB 1316, will also provide the state with a picture of how these projects can work to provide additional infrastructure to drivers, promote transportation alternatives, and encourage changes in driving patterns in response to congestion pricing.

***14. Do you regard the toll facilities operating in Orange County as successful? If so, please describe the benefits they provide versus the costs they impose on travelers?***

Yes, the toll facilities in Orange County are successful. Orange County has a variety of toll options which demonstrate how toll roads can provide all commuters with enhanced mobility options above and beyond the user of the toll facility itself. The SR-91 toll facility was not developed by converting High Occupancy Vehicle (HOV) lanes, but rather by adding a lane—and capacity—by using the median along the SR-91 freeway. In addition, the revenues from SR-91 toll facility are controlled by a public agency and provide funding for improvements to the adjacent “free lanes” so that all commuters benefit from the system. OCTA has directed over \$10 million in toll revenues to improving the general purpose (non-toll) lanes at no cost to those commuters. The SR-91 toll facility has opened to all traffic to assist with evacuations during emergencies as seen during the fires last summer and when necessary to move traffic out of the way during major accidents. In addition, carpoolers also receive free trips during most hours on the toll facility and greatly reduced prices during peak hours. In 2007, over 3 million HOV 3+ trips were taken on the lanes.

The 91 Express Lanes were the first toll road in the country to use variable congestion pricing, serving now as a national model and success story. Since 2003, OCTA has had a congestion/dynamic pricing policy based upon traffic volumes, monitored and adjusted on average every 12 weeks. The objective is to maintain free-flow conditions on the express lanes to provide travelers with a safe, reliable and predictable commute. The higher the volume of traffic, the higher the toll, but if traffic volumes decrease, tolls are also reduced.

Since travelers themselves estimate that using the facility saves them an average of 38 minutes on their afternoon/evening commute, OCTA has found that most individuals conduct their own analyses and use the road at the times when it is deemed most beneficial to them. Lastly, OCTA found in their 2007 survey that about 21% of users also report using other OCTA transit services



such as Metrolink, standard bus service, and express bus service as mobility options on other days of the week.

The toll pricing program implemented by the Transportation Corridor Agencies (TCA) is successful in that they have added lane miles to the state highway system at no cost to the state. These new lane miles relieve congestion on the heavily traveled interstate freeways I-5 and I-405. Congestion pricing encourages practices that improve air quality by encouraging commuting when traffic is less congested or by encouraging users to take transit during peak periods through the increased pricing of using the toll road. This ultimately works toward meeting the goals of reducing greenhouse gas emission which is the goal of AB32 and the state.

TCA's toll roads in Orange County (SR 241, 261, 133 and 73) have performed well in providing alternatives to congestion filled freeways and arterials. Nearly 300,000 cars a day are using the existing 51-mile toll road network resulting in a tremendous decrease in congestion on the freeways and arterials in the region. Less congestion equates to a decrease in green house gas emissions caused by idling cars, particularly on the I-5 freeway which is currently the only highway providing service to commuters and goods movement between Orange County and San Diego.

Orange County's toll system is an alternative highway network to commuters that complements the existing state and federal highway system. It provides congestion relief that helps in meeting the region's federal air quality attainment metrics and at no cost to the state. The toll roads and facility are an effective and successful public-private partnership, balancing private capital with oversight by local government that serves as a model for the nation.

**15. *What recommendations would you make to the Legislature in forming its policy on toll roads or other pricing strategies in transportation?***

The Commission recommends that the Legislature and administration continue to expand public-private partnerships in 2009. The success of other countries and other states with similar political, demographic, environmental, and transportation challenges suggests that the institutional challenges to public-private partnerships can be overcome.

A key threshold question that needs to be answered in the policy debate is future funding to build the transportation capacity a future California with 50 million people will need. Proposition 1B is a much-needed shot in the arm for transportation funding; however, the resources in Proposition 1B are inadequate to deal with the capacity needs of 2015 and beyond. Based on the experience of other countries and states, gas and sales taxes cannot be raised high enough to meet these needs; tolls and user fees are necessary to pay for the needed mobility.

**State Transportation Improvement Program**

**CTC is responsible for adopting the biennial five-year state transportation improvement program (STIP), as well as for allocating state funds for capital improvement projects**

consistent with STIP. In recent years, CTC has taken actions to program transportation funds with an emphasis on improving the state highway system. Public transit advocates have been critical of the process through which transit funds are made available for projects through STIP. Specifically, advocates have suggested that funds in the Public Transportation Account could be made directly available to regions in the state where a priority is placed on public transit, rather than subjecting those funds to the strict STIP formulas.

County shares of STIP funding are largely determined by population. Urban areas have larger populations and worse traffic congestion than rural areas. In addition, urban areas are generally more successful at raising revenues for transportation at the local level.

*16. Do you have any concerns with how public transit funds are distributed in the STIP process? Do you have any suggestions for how these funds might be distributed more efficiently?*

The concern is not with how transit funds are allocated by the STIP distribution formula but the unreliable and unstable funding source from which these funds come from. The Public Transit Account (PTA) is a transit-only funding source, and yet funds have been diverted away from transit in the past year. Proposition 42 funds are more flexible as far as distribution to both transit and highway projects, yet these funds may be used by the Legislature for other purposes. All STIP funds are flexible to the regional priorities, but the average amount of money available through the STIP has declined as well. Transit funds from the STIP are distributed based on what the regions view as their priorities.

Transit has an opportunity to play an important role in reducing congestion, enhancing mobility and partnering with alternative modes of travel in the reduction GHG emissions. The Legislature defines and supports the role of transit for the State and must provide secure and reliable sources of funding for it to be successful.

*17. Do you have any concerns with how STIP funds are distributed among urban and rural areas? How do you describe your approach to balancing the transportation needs of rural and urban areas?*

The biggest concern for the STIP funding program is not the distribution or distribution formulas of the funds but the funding system itself. The threat of borrowing from programs like Proposition 42 and the PTA leave the STIP as an unstable and insufficient funding source to meet both the urban and rural area needs. The key to providing a balanced approach to addressing rural and urban needs is to not divert or take away any further funding to this program or the other programs that flow into the STIP.

Where urban and rural, or smaller, counties do differ significantly in addressing their funding needs is over sales tax measures dedicated to transportation. Nearly all of the state's urban counties have transportation sales tax measures. Some even have more than one. Those counties



have a distinct advantage in terms of advancing their regional priorities and making those priorities competitive for STIP funding.

The two-thirds vote to pass requirement continues to be an issue for some rural counties. However, CTC could help rural counties educate their voters on the increasing funding needs for local streets and roads, highways and transit and the fact that existing revenues are declining in value.

It is important for rural counties to enjoy statewide connectivity, as should urban counties, for a healthy statewide system.

### **Public Transit Operations**

**In the midst of the state's recent and continuing fiscal crisis, policymakers have moved to redirect funds originally intended to support the operations of public transit systems in California. In recent years, as much as \$4 billion has been redirected in a manner to assist the state's General Fund. This policy shift has occurred at a time when many policymakers support strategies to reduce emissions, including greenhouse gas emissions, from cars and trucks. While they recognize that public transit provides a vital and necessary alternative to driving, the state's fiscal condition has made making investments in public transit operations difficult. Policymakers are exploring new strategies to provide necessary resources for public transit operations from "off-budget" sources (i.e., not involving the General Fund).**

**18. *Do you think the state of California sufficiently invests in public transit operations? Is this a legitimate responsibility of the state, or is it primarily a local concern?***

With the passage of AB 32 and SB 375, demands on transit operations are increasing while state funding has been decreasing or even eliminated. The recent diversion of State Transit Assistance Funds took away a major source of transit operating funds for most of the regions. If there is a state goal of reducing greenhouse gas emissions through the increased use of public transit, there is a concurrent state responsibility to help regions meet that goal by providing funding to meet those increased service demands. Not every region will be able to sufficiently generate enough local revenues to fund the higher level of transit operations anticipated under AB 32 and SB 375.

There is a legitimate need for the state to invest in public transit operations to meet mandates set by AB 32 and SB 375 but there is also a local interest and imperative to invest in public transit to meet the needs of residents and businesses. As an example, in Orange County, local sales tax dollars are being invested to expand transit service on the Metrolink system to ensure commuters enjoy enhanced service times and options. Orange County Transportation Authority, working with local cities and stakeholders, is expanding transit options through its "Go Local" program – also financed with local funding – to provide connector services to the major employment and academic areas of the county with the Metrolink system. A number of cities throughout the county are zoning for increased Transit Oriented Development projects, significantly in

Anaheim, Irvine, and Santa Ana, to meet the workforce housing needs of Orange County residents and businesses, consistent with the intent of SB 375 and AB 32.

**19. *What actions can the CTC take to enhance funding for public transit operations in California?***

The Commission has limited ability to “enhance funding for public transit.” However, the Commission also recognizes the rising concern that transit funds are dissipating with the passage of each state budget. The Commission has taken a role of facilitating, educating and exposing the growing concerns for lack of transit funding. In October 2008, the Commission joined with the California Transit Association in organizing a Transit Summit Workshop. The intent of the workshop was to invite transportation stakeholders, including but not limited to, transit partners, the Department, Business, Housing and Transportation, regional agencies, metropolitan organizations, legislators, legislative analyst’s office, senate transportation committee members, assembly transportation committee members, and other interested consulting firms. The turnout of participants far exceeded our initial guesstimate of interested parties.

Summit participants were asked to identify and prioritize recommendations to improve the state system for planning, programming and funding transit capital projects. The focus of the day was on the State Transportation Improvement Program and how Public Transportation Account (PTA) dollars (i.e., when they are available) are allocated through the STIP for transit projects. Several of the stakeholders formed diversified groups that collaborated on and made recommendations regarding changes in the system; stabilizing and growing transit funds; suggested changes to state policy or tactical actions that would support and facilitate local transit planning and programming.

The Summit ended with the creation of a Summit Task Force Committee. The expanded Task Force was charged with following up on the priority-setting exercise conducted by all Summit participants, fleshing out the two or three key proposals, and then re-convening all the Summit participants for a second full day workshop (most likely in the Spring of 2009) to consider next actions.

The Commission may not have a specific role to enhance funding because its role is to allocate funds according to formulas in statute. However, it can better position itself as an advocate in bringing together entities in seeking common goals to procure public transit funding.

**20. *What recommendations might you make to the Legislature to stabilize funding to public transit operations?***

Prop 42, overwhelmingly supported by California voters, provides long-term, sustainable funding for both the STIP and the Public Transportation Account (PTA). Those accounts should be preserved to fund these vital transportation programs.



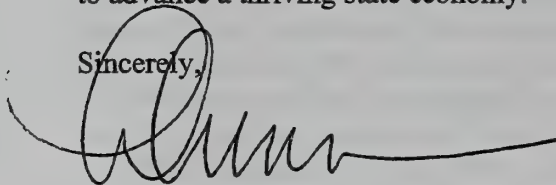
Mrs. Nettie Sabelhaus  
April 8, 2009  
Page 16

State support for transit operations needs to be restored and the Public Transportation Account preserved in order to assist regions with meeting the state's greenhouse gas emission reduction goals as outlined in AB 32 and SB 375. Both of these initiatives envision increased transit service at a time when the state is removing its funding support for those purposes. California's goal to reduce greenhouse gas emissions through the increased use of public transit should be supported with a concurrent state responsibility to provide investment that helps regions meet increased transit service demands.

Without regard to the politics of these ideas: consider further enhancing public-private partnerships for transit; incentivizing increased housing supply and density in exchange for an on-going contribution by that development toward transit benefiting residents of the development (not limiting it to merely "transit-oriented development"). Reliable, sustainable, and increased transportation and transit funding will help the regulated community meet its AB 32 reduction targets in the time allowed by law. The Legislature could incentivize innovative automobile technology to expedite its market-readiness as transit alone will not meet the needs of a growing population.

Most importantly, long-term, stable funding for transportation is assured with a strong, vibrant California economy. When businesses thrive, they pay taxes, hire workers who pay taxes, funding state priorities and programs with consistency. The Legislature must continue its efforts to advance a thriving state economy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lucetta Dunn', with a long horizontal flourish extending to the right.

LUCETTA DUNN  
Commissioner

Enclosure – Form 700

To: Senate Rules Committee, Darrell Steinberg, Chairman  
From: Julia M Johnson, LEP  
Responses to Questions for Confirmation Hearing for Appointment to BBS  
April 6, 2009

1. What efforts have you made to advance your previously stated goals? Do you believe you have met your goals? If so, are there some additional objectives you now have in light of your experience on the board?

I believe that these goals have been partially achieved but that due to the dynamic nature of the state of California – linguistically, culturally, socio-economically, educationally – these goals will always present a worthy challenge to attain. I am currently developing a Code of Ethics for the Licensed Educational Psychologists in the state of California, as our profession is quite young and this has never been undertaken. This is also to fulfill requirements for a Doctorate in Leadership for Educational Justice, which also compels me to remain a voice on the BBS for underserved populations in the area of equitable access to mental health resources.

2. How has your board experience influenced the way you now approach your duties?

I am always seeking insights now from a perspective that is so much larger than just my work at Pioneer High School in Whittier or my private work throughout Orange County – the experiences that I have had visiting MHSA providers throughout this vastly diverse state have provided me a lens to consider for providing necessary services to ALL consumers – from Native American communities, to rural agricultural communities, to Asian American and Hispanic enclaves in large urban areas who do not have nearly enough mental health providers that speak their language.

3. Did your board have any input into the merged Mental Health Board proposal?

We had some preliminary discussion. I'm not aware of further input.

4. Do you believe that the board's existing disclosure provisions are sufficient to enable consumers to make informed choices? Are there changes that you would recommend?

Yes, I believe that they are currently sufficient. I believe that the obligation for the Board to provide sufficient information for consumers to make informed choices is imperative. Information is power and we need to empower all of the consumers to be self-advocates and access necessary resources, whatever these may be. A stronger public-Board partnership makes for a stronger state.

**Senate Rules Committee**

APR 09 2009

**Appointments**



5. How does the board ensure that members of the public – including those with limited English proficiency – can participate in or access information about its activities? What more could the board do to ensure that consumers are aware of the board and the important role it plays?

As part of our Board Strategic Plan, developed and adopted during my first appointment to the BBS, we have ongoing and comprehensive surveys that are given to the public, constituents, and consumers to monitor our efficiency in these regards. These are available to access on the Board website as well. We have been conducting our quarterly board meetings in different places throughout the State of California as invitation to a wider base of consumers, in partnership with our Board visitations to MHSA providers. These are all deliberate attempts at broader visibility and 'consumer-friendly' representation.

6. How has the board used the Internet and other technology to increase public participation and improve services to its licensees?

We have contracted with a new provider for the administration of licensing exams which includes more advanced technology and a more efficient service delivery system. Our website is constantly being updated with helpful information for the public as well as current and future licensees, ie. educational opportunities, career opportunities, professional organizations, local and state agencies, laws and ethics governing the profession.

7. Please describe the status of the plan to address the shortage of mental health providers to underserved populations? Are there specific steps you are taking to deal with this issue?

Part of the Board's active initiative to address the needs of underserved populations is reaching out to the MHSA providers/consumers and encouraging dialogue with board members through the internet and visitations to agencies, especially in those underserved regions of the State. I personally attend the CASP convention each year with Board staff to address the population of School Psychologists about the need for licensure as LEP's. I am planning on visiting School Psychology graduate programs this year with the Board's Outreach Coordinator to address these concerns of shortage in the profession and encourage these students to be preparing for an LEP license now.

8. Has the board made any effort to encourage high school as well as college students to consider jobs in social work and mental health professions?

See #7 above – The Outreach Coordinator position was designed with this in mind and he has a busy schedule addressing High Schools, Universities, Graduate Schools, and Professional Organizations for all of the BBS licenses, throughout the state.

9. There is a significant demand for mental health professionals in the public sector, such as the Dept. of Corrections and Rehabilitation. How does the board consider the needs of public entities when evaluating workforce development issues?

This issue has been discussed regularly since the MHSA programs have been available and active throughout the state. The Board has visited such programs and made it a priority to start accessing potential mental health professionals for public entities at an early education/intervention level. The Board has visited public agencies in Sacramento, Central Valley, and most recently had trips planned to Pelican Bay Prison and mental health clinics on Native American reservations before the budget considerations made this currently unfeasible.

10. Given the 10 percent reduction of staff hours worked and restrictions on personal services contracts, how will the board ensure it is able to meet the needs of its constituents in a timely and efficient manner? Are there any backlogs in the board's licensing and/or enforcement programs as a result of the staff cuts? Does your exemption cover overtime and temporary employees?

The Board received an exemption from the executive order that was given to State workers; therefore the impact on Board operations has been only marginal in its impact on the ability for quick turnaround with licensing. When the furloughs were mandatory for a 6 week period, there was some operational impact, but now that they are using self-directed furloughs as variable time taken 2 days per month, this adverse effect has been mitigated. The Board has also hired pt-time assistance to compensate for the furloughed employees and therefore a backlog does not currently exist.

11. How does the board prioritize its responsibilities, particularly given current budgetary realities?

The Board continues to prioritize its responsibilities as enforcement, licensing exams, and cashiering. These have always been the core priorities of the Board and as discussed in #10, the effects of the current budgetary realities have been largely mitigated through excellent management of the Board staff and the creative efficiency of our Executive Officer.



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March 12, 2009

Honorable Darrell Steinberg  
Senate Pro Tem  
Chair, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814

**Senate Rules Committee**

MAR 13 2009

Dear Senator Steinberg:

**Appointments**

Thank you for your recent letter (February 24) regarding my Senate confirmation, and for the opportunity to answer some questions based on my experience with the Contractors State License Board, and my ongoing goals.

*1. What efforts have you made to advance your previously stated goals? Do you believe you have met your goals?*

Making sure consumers are armed with the proper information to make informed choices is an ongoing goal, and I do believe the Board has made real progress in that regard. Surveys completed support that notion – with an increase in consumers who inquire about licensees with the CSLB. I believe the web-site is much improved, as are the publications for consumers. In addition, there has been a consistently high level of earned media coverage and public events over the last few years that have highlighted the Board's work in enforcement and consumer awareness. Partnerships with various stakeholders and associations have also proven successful in leveraging outreach.

I also believe the CSLB administration has made significant improvements in process, with improvements in call wait times, reduction in case backlogs, improved technology and outreach, and improved statistical reporting. Application processing times have also been reduced. In addition, the board conducts annual comprehensive strategic planning and goal setting. The overall process is more efficient and measurable. I am attaching the 2008 Accomplishments & Activities summary booklet for your reference.

*2. What are your current goals and objectives as a member of the CSLB? Are they different from your original goals as an appointee? What do you hope to accomplish during your next term? How will you measure your success?*

I wouldn't say there is a significant departure from my original goals, but to ensure that we continue to build on the improvements that have been established. Consumer awareness and administrative efficiencies are ongoing goals. I would say leverage partnerships in the community and with stakeholders for maximum effectiveness. Keep improving the website and web-based technologies. Continue to measure through established survey techniques – both qualitative and quantitative as budgets permit. I think we need to spend more time looking at the workforce of the future, career technical training, and ways to improve participation in contracting as a profession.

Robert Brown  
Responses  
Contractors' State  
License Board



*3. What have been your most significant accomplishments as a member of CSLB?*

I feel there is an improved sense of structure with appropriate measurements and improved process. I can't claim credit as one member, but I think there are strong working relationships with proven and varied experience among the board members and staff. Board members aren't afraid to challenge the status quo or look for ways to improve. I also am very proud of how the CSLB has responded after disasters – such as the Angora Fire and fires in Southern California – in getting information to victims in a timely manner and going after those bad actors who prey on victims. I currently chair the Public Affairs committee and I am proud of the earned media coverage, improved website and publications, and research gleaned to improve public outreach.

*4. Do you believe there is sufficient supply of qualified contractors to perform the work outlined in the federal stimulus bill?*

I do think there are, especially given the dire economic conditions and need for jobs. I would note however, that the while CSLB licenses all construction contractors, its focus is in on the residential construction industry. But CSLB has been meeting with interested parties to assist agencies that award public works contracts. They are looking at ways to ensure that contracts for public works projects provide good value to the public. They are looking at web-based tools and other resources to assist agencies, and sharing best practices. But overall, I would say it is critical for the CSLB and others to stress the importance of workforce development to make sure we have a sufficient supply of contractors to meet future demands of public works as well as residential construction needs.

*5. Given the staff cuts and large scale construction projects in the stimulus bill, how will the board ensure it is able to meet the needs of the construction industry in a timely and efficient manner?*

CSLB has not suffered staff cuts to same the degree as some, given it is a special fund agency. But I do think that one of the opportunities with the budget and staffing challenges, is it forces everyone to take a closer look at prioritization and further review efficiencies. I believe multi-agency coordination is important, as well as effective communication and partnership with industry. As a Board member we get weekly updates from staff on processing times and other developments so that we can review progress and benchmarks.

*6. How does the board prioritize its responsibilities, particularly given current budget realities?*

This is one of the key reasons that the board has an annual strategic meeting and review with goals that are specific, measurable, accountable and timely. Each spring the board and staff look at how they reached or didn't reach specific goals and why. The board gives direction for staff after reviewing and assessing the details – and weighing the challenges. I am attaching the strategic plan update for 2008-09.

*7. What efforts has the board undertaken to address the long-term trend of declining workforce, as outlined in the strategic plan? Has the board made any effort to encourage high school students to consider jobs in the construction industry?*

We recently addressed the need at a public meeting for the CSLB. We had a very sobering and in-depth report from one of our board members (who chairs the licensing committee) about the need facing the entire industry to fortify the next generation of contractors. The CSLB works with private associations, labor groups and others to address the issue, as well as running articles in its newsletter. I think the emphasis and support by the Senate Pro Tem and Governor on the importance of vocational education and career technical training is absolutely warranted and vitally important. This will certainly be a priority for the CSLB (and me as a Board member) in the next term. I will plan to follow up on our educational institution outreach progress in particular.

*8. Please explain your position on retroactive criminal background checks of CSLB licensees.*

I missed the discussion at the November board meeting due to a family commitment. I am respectful of the very real budget/resource constraints and implementation challenges, but I think it's something that needs continued examination. If this can help remove consumer threats - we should do everything possible to improve the situation. I will certainly follow up on this issue and delve deeper into its details, challenges, and implementation possibilities. From a timing standpoint, it will be helpful to see how implementation efforts progress with the Health Boards – and perhaps we can learn some from that experience and its impacts. One difference however is those boards license primarily individuals, whereas CSLB licenses many entities and has different enforcement and implementation issues to resolve.

*9. Do you believe that the board's existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a contractor? Are there changes you would recommend?*

I believe the board does whatever it can to ensure proper disclosure and transparency. From what I can gather, CSLB has been a leader in disclosing disciplinary information to the public. The "CSLB Most Wanted" feature is new to 2008. We will continue to look for new ways to disclose the appropriate information for consumer awareness. The CSLB has revised and updated publications, made website enhancements, and reached out to consumers in public/community forums. We also just concluded focus groups and surveys to consumers and licensees on ways to improve/enhance outreach messages and communication. We will look to embark on new web-based and radio messaging to respond to those learnings.

*10. How does the board ensure that members of the public – including those with limited English – proficiency- can participate in or access information about its activities?*

CSLB has staff who are proficient in other languages. They provide the ability to use translators for exams. They have translated some materials – such as the Tip Cards and "What You Should Know Before Hiring a Licensed Contractor" into Spanish. The CSLB also conducted half of the focus groups in Spanish – and conduct senior consumer forums in other languages.

*11. CSLB posts meeting agendas and minutes on its Web site; meeting materials may be obtained separately upon request. Has the board considered posting its meeting materials online?*



I will follow up on this, as whatever we can do to maintain public transparency is important. My understanding is that the CSLB staff is considering this.

*12. How has the board used the Internet and other technologies to increase public participation and improve services to its licensees?*

I think this will be an ongoing priority of the board outreach goals. It was a topic of discussion during focus groups with consumers and licensees, as to what information they want. It is also a key communication element in marketing and education in a cost-conscious environment - when television advertising can be cost prohibitive. More and more users get their information from the web. The CSLB recognizes that, which is what they've undergone an extensive overhaul of the website - with new improvements. The building official community, construction industry, and law enforcement have been complimentary of the site.

*13. Is CSLB facing the same staffing shortages caused by retirements that are affecting other state departments? If so, what steps are you taking to ensure you have a qualified workforce for the future?*

The CSLB does face these challenges and have made this issue a priority with broad and deep plans. They are identifying critical skills and establishing training and career development for current and future staff. They are developing succession plans for each division (especially enforcement) - identifying the gaps and looking at best practices. They are also comparing plans with similar agencies.

*14. Please outline the type of training CSLB provides its employees on a regular basis?*

Certain training is required for all staff, including sexual harassment prevention, information security awareness, privacy awareness, and defensive driver (as applicable). Some trainings are required for supervisors and managers including, ADA/FEHA, Supervision 1 & 2, labor relations and ethics orientation. The Licensing division has a week long training for new employees, and new employees are enrolled in a training at the Dept. of Consumer Affairs as well. Further, employees take numerous courses related to their specific division and position. For example, the CSLB is providing 2 enforcement classes this spring for all the enforcement representatives. I think training is a critical element to consistently review for effectiveness, and make sure the workforce is current in its relevant skills to meet the needs of consumers and the marketplace.

Thank you for the opportunity to respond to your questions, and thank you for your consideration of my confirmation. Please let me know if there is anything further you need, and I will make myself available as necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Brown', with a long horizontal line extending to the right.

Robert Brown

CONTRACTORS STATE LICENSE BOARD

# Strategic Plan 2008-09







## MEMBERS OF THE BOARD

JAMES MILLER, PUBLIC MEMBER, CHAIR

CINDY MITCHELL, CONTRACTOR, VICE CHAIR

EDWARD BARNES, PUBLIC MEMBER, SECRETARY

MATTHEW KELLY, PUBLIC MEMBER, PAST CHAIR

ROBERT BROWN, PUBLIC MEMBER

JOAN HANCOCK, CONTRACTOR MEMBER

LOUISE KIRKBRIDE, PUBLIC MEMBER

ROBERT LAMB, PUBLIC MEMBER

ED LANG, PUBLIC MEMBER

STEVE MATICH, CONTRACTOR MEMBER

BERNEDETTE MEDRANO, PUBLIC MEMBER

LISA MILLER-STRUNK, CONTRACTOR MEMBER

BRUCE RUST, PUBLIC MEMBER

ARNOLD SCHWARZENEGGER

Governor

ROSARIO MARIN

Secretary, State and Consumer Services Agency

CARRIE LOPEZ

Director, Department of Consumer Affairs

STEPHEN P. SANDS

Registrar, Contractors State License Board

JULY 2008

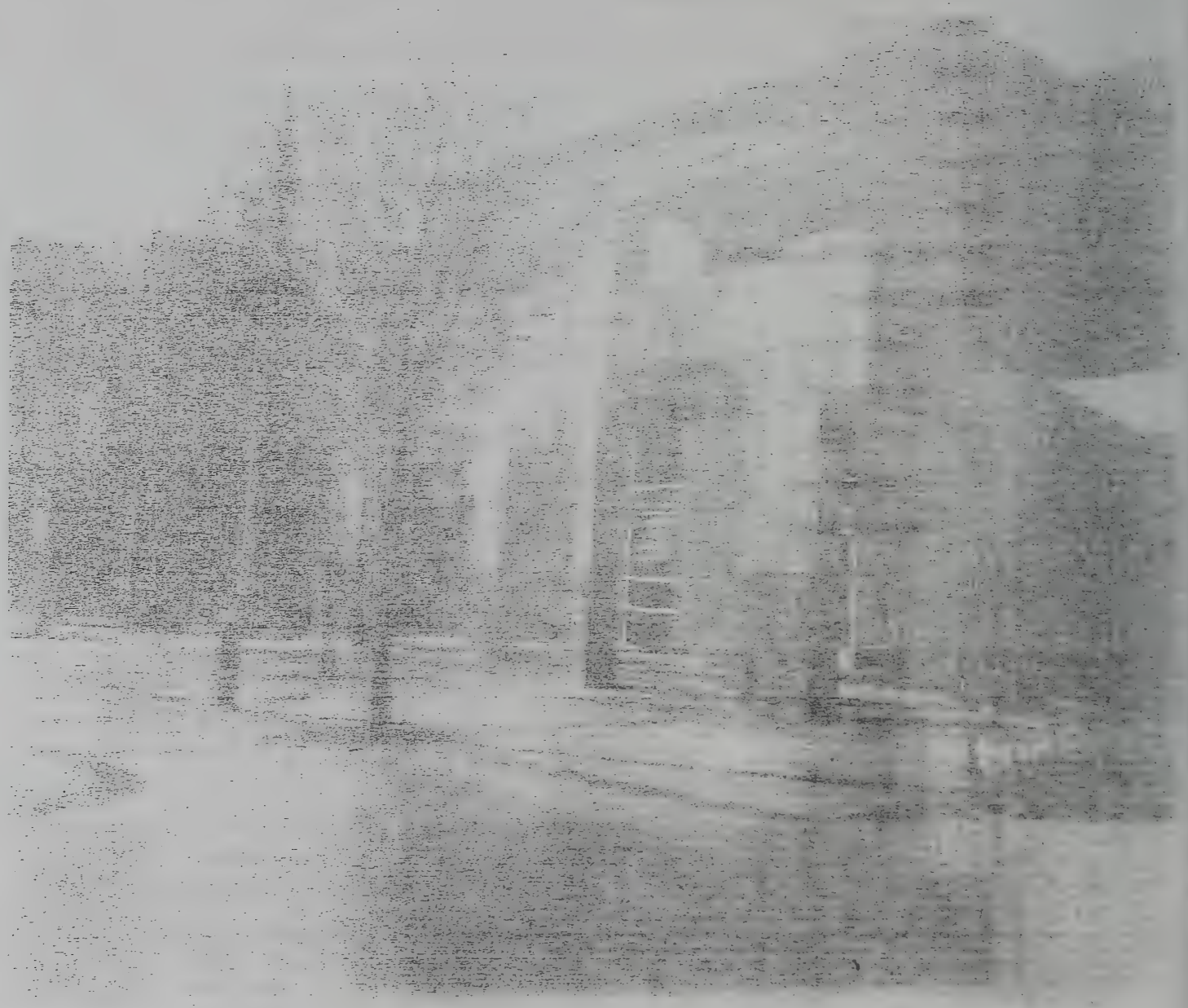
## STRATEGIC PLAN

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## **STRATEGIC PLAN**

# **CONTRACTORS STATE LICENSE BOARD 2008-09 STRATEGIC PLAN**

The California Contractors State License Board (CSLB) is the consumer protection board charged with licensing construction contractors who work in the state, resolving consumer complaints, educating consumers, and enforcing state laws that pertain to contractors. CSLB licenses or certifies contractors in 43 classifications and registers home improvement sales people.

Created in 1929, and now an independent board within the California Department of Consumer Affairs (DCA), CSLB is governed by a 15-member Board consisting of licensed contractors, a building official, members of the public, and a labor representative. The Registrar of Contractors, appointed by the Board, directs administrative policy.

CSLB activities include administering examinations to test prospective licensees, issuing licenses, investigating complaints against licensed and unlicensed contractors, issuing citations and suspending or revoking licenses, and seeking administrative, criminal, and civil sanctions against violators.

The construction industry in California is distinct from other states in terms of its breadth, magnitude, and complexity. California is one of the top 10 world economies, and construction is the state's number one industry. California's physical size, large and diverse population, varied landscape and climate, frequent seismic activity, distinctive legal framework, and massive economy create an unusually demanding context for contractor licensing.



## REVIEW OF 2007-2008 ACCOMPLISHMENTS

In developing this plan, Board members reflected on CSLB accomplishments over the previous year. Overall themes included expanded awareness of CSLB, improved internal processes, improved enforcement levels, and expanded partnerships:

### Licensing

- Improved testing practices and standards
- Reduced wait time for applicants and callers

### Enforcement

- Continued to improve and expand partnerships with other agencies, such as District Attorneys, for more effective and proactive operations
- Built new levels of credibility for CSLB among stakeholders
- Improved investigative procedures
- Created new Memoranda of Understanding with partner agencies
- Emphasized education as part of sting operations
- Used outside input from stakeholders to improve operations, including audits

### Public Affairs

- Expanded public affairs activities statewide and increased CSLB visibility
- Built new levels of appreciation for the importance of licensure among the public, media, agency partners and contractors
- Conducted timely, effective emergency response operations, particularly for the Lake Tahoe and San Diego area wildfires
- Broadened multi-lingual services and materials
- Created more integrated and accessible online Web tools
- Enhanced the CSLB brand

### Legislation

- Increased legislators' awareness of CSLB
- Partnered with more building officials, including expanded awareness of the need for more focus on owner-builder contractor issues

### Administration

- Improved internal reporting procedures
- Identified partnership needs and expanded partnerships
- Began advanced succession and hiring procedures and planning
- Continued to maintain effective operations and high staff performance
- Elevated organizational development practices in the CSLB operational structure

## STRATEGIC PLAN

The Board has established the following priorities that direct program activities:

1. Focus on early intervention and on serious (health and safety) complaints.
2. Keep licensees in business and maintain the collection of revenue by keeping renewals and license maintenance current.
3. License applicants by reviewing qualifications and criminal background, and administer legal and effective exams.
4. Educate consumers about their rights and responsibilities, and stress ways that consumers can protect themselves.
5. Stress early intervention and resolution of reactive complaints, and refer minor complaints to small claims court.
6. Provide services through the Licensing Information Center and the front counter.
7. Ensure that Administrative Services and Information Technology units provide the support necessary to maintain programs.

**The Contractors State License Board protects consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction.**

The Contractors State License Board will accomplish this by:

- Requiring licensure for any person practicing or offering to practice construction contracting;
- Ensuring that construction is performed in a safe, competent, and professional manner;
- Licensing contractors and enforcing licensing laws;
- Enforcing laws, regulations, and standards governing construction contracting in a fair and uniform manner;
- Providing resolution to disputes that arise from construction activities; and
- Educating consumers so they make informed choices.



**California consumers and contractors will have a safe, fair, and competitive marketplace.**

- Contractors possess the knowledge, skills, and abilities necessary to provide clients and the general public with professional services and products.
- Consumers have access to adequate redress if they are harmed by incompetent or dishonest contractors.
- Consumers have information they need to make informed choices.
- Contractors have access to information they need to practice competently and honestly.

**The Contractors State License Board will strive for the highest possible quality throughout all of its programs. To that end:**

- CSLB believes in treating all consumers and contractors fairly.
- CSLB supports its staff and their professional dedication.
- CSLB focuses on prevention, providing information to consumers and contractors.
- CSLB is progressive, utilizing the most advanced means for providing services.

**The Contractors State License Board has established five goals, which provide the framework of its mission:**

1. **Licensing** - Ensure that all applicants and licensees are qualified to provide construction services.
2. **Enforcement** - Reduce, eliminate, or prevent unlicensed activity and unprofessional conduct that pose a threat to public health, safety, and welfare.
3. **Public Affairs** - Educate consumers to make informed choices about construction services, and ensure that licensed contractors strengthen their technical management and service skills.
4. **Legislation** - Ensure that statutes, regulations, policies, and procedures strengthen and support Board operations.
5. **Administration** - Enhance organizational effectiveness, and improve the quality of customer service in all programs.

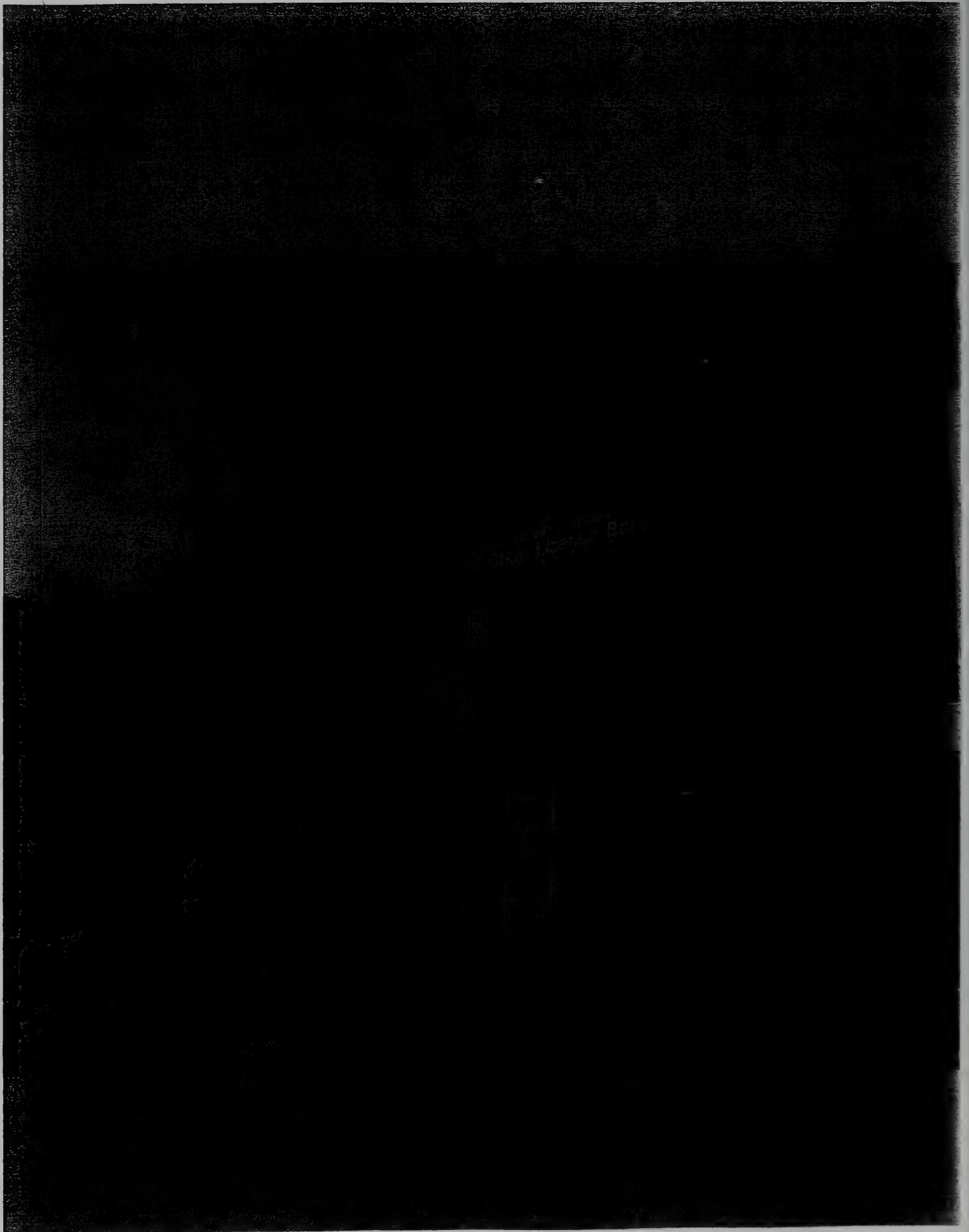
## STRATEGIC PLAN

### CHALLENGES AND OPPORTUNITIES

The Board identified challenges it faces in the near and long terms, and ways to address each challenge with a specific opportunity for change. The following table presents these challenge-opportunity pairings.

CHALLENGE	OPPORTUNITY
Engaging and working with partners	Explore new partnerships with other state agencies
Expanding legislators' awareness of CSLB	Highlight CSLB success, particularly with the "Senior Scam Stoppers" program
Facilitating an efficient licensure application process	Identify and remove obstacles throughout the process and increase the use of technology
Addressing disparate pay levels within CSLB in comparison to similar agencies	Conduct compensation package analysis
Preventing fraudulent testing by surrogates	Improve candidate identification system
Addressing the impact of unlicensed operators	Expand education for licensed contractors and consumers on the consequences of using unlicensed operators
Providing state-of-the-art Web-based tools	Create more consumer-friendly Web tools and identify new partners and tools to streamline management of Web-based data
Losing critical staff through turn-over and attrition	Identify critical skills and establish training and career development for current and future staff
Using the industry expert pool in a more effective manner	Develop a highly trained pool of industry experts that can supplant staff resources
Declining contractor workforce in the face of long-term trends of declining skill bases	Assess Board's role in workforce development
Maintaining contractor qualification levels	Expand contractor education programs



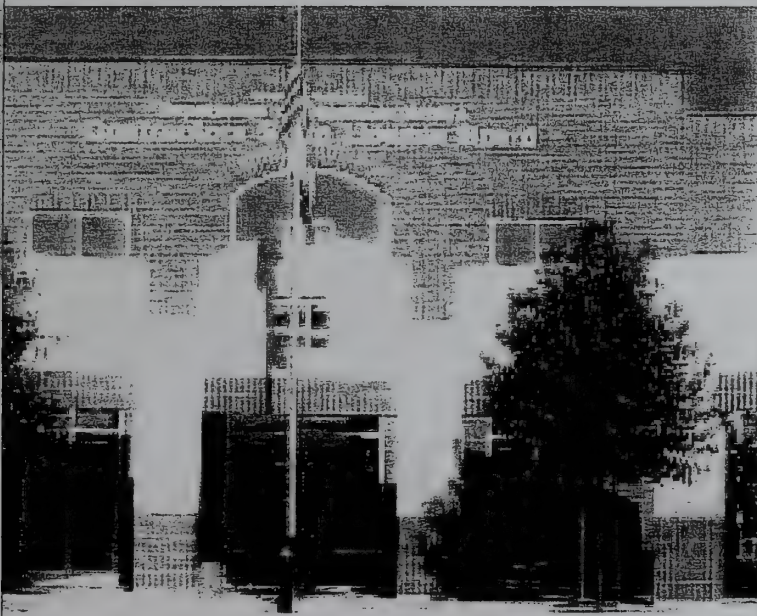


## STRATEGIC PLAN

### STRATEGIC DIRECTIONS

**The Board has identified the following priorities and strategic actions in order to advance CSLB, meet its challenges, and capitalize on opportunities:**

- Educate consumer base by equipping consumers with informational tools and increased awareness of risks and benefits inherent in construction and home improvement
- Improve awareness of CSLB with consumers, contractors, agencies and legislators
- Advance licensing program through technology, staffing and accessibility
- Support and strengthen the skilled contractor force through education
- Prepare for future CSLB workforce through recruitment and staff development
- Expand enforcement partnerships



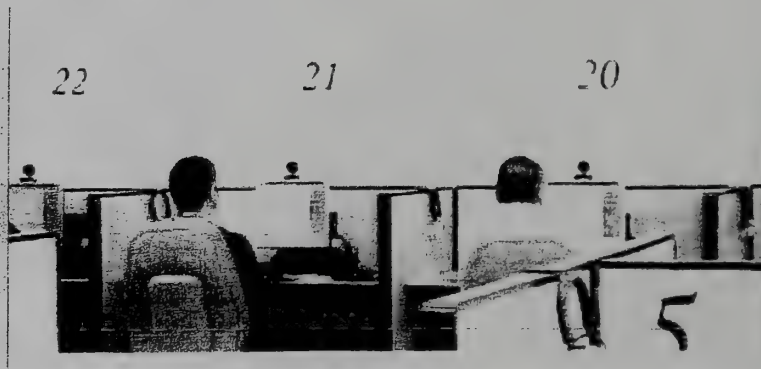


**Goal 1—Ensure that all applicants and licensees are qualified to provide construction services.**

The Licensing Committee meets this goal by:

- Ensuring that exams are current and relevant;
- Ensuring that all licensed contractors meet experience and education requirements and exhibit basic business competency skills;
- Ensuring accuracy of information submitted by the applicant and applicant integrity; and
- Ensuring that all processes in Licensing are current and efficient.

OBJECTIVES	LEAD RESPONSIBILITY	TARGET DATE
1. Add a photo ID to the Home Improvement Salesperson pocket license	Staff	July 2009
2. Reestablish e-mail unit in the Licensing Division	Licensing Committee	July 2009
3. Create new dedicated bilingual positions in Licensing Information Center	Licensing Committee	July 2009
4. Revise pocket license and wall certificates	Licensing Committee	July 2009
5. Increase exam seating by expanding Fresno and San Diego testing sites	Staff	October 2009
6. Improve candidate identification at testing centers	Staff	October 2009
7. Implement the DCA on-line licensure tool for credit card payment	Licensing Committee/DCA	July 2012
8. Implement on-line license exam scheduling tool after DCA iLicensing is implemented	Staff	July 2013



## STRATEGIC PLAN

### **Goal 2—Reduce, eliminate, or prevent unlicensed activity and unprofessional conduct that pose a threat to public health, safety, and welfare.**

The Enforcement Committee meets this goal by:

- Adopting policies and procedures that encourage voluntary compliance;
- Providing appropriate information to the public on the status of enforcement activities;
- Developing policies and procedures to work with other governmental and law enforcement agencies;
- Developing policies and procedures to improve the quality of legal actions; and
- Maintaining standards and goals.

OBJECTIVES	LEAD RESPONSIBILITY	TARGET DATE
1. Develop criteria for reactive complaint enforcement to maximize effectiveness with current resources	Enforcement Committee	March 2009
2. Perform an Enforcement and Case Management program analysis	Outside Consultant	June 2009
3. Establish a new Investigative Center in the Santa Clarita Valley	Enforcement Committee	June 2009
4. Develop a new electronic mechanism for the public to report violators	Enforcement Committee	June 2009
5. Develop a multi-agency template for complaint reporting and feedback	Enforcement Committee	October 2009
6. Develop Web-based tools for agencies that award public contracts, to help hire qualified contractors and report violators	Enforcement Committee	January 2010



**Goal 3—Educate consumers to make informed choices about construction services and ensure that licensed contractors strengthen their technical management and service skills.**

The Public Affairs Committee meets this goal by:

- Informing the public about the role and function of CSLB;
- Educating the public about their rights and responsibilities in the contracting process;
- Educating contractors about building codes, construction methods, and business practices; and
- Ensuring that contractors understand their professional obligations and responsibilities

OBJECTIVES	LEAD RESPONSIBILITY	TARGET DATE
1. Update and implement Public Affairs plan through 2009, based on Board-approved priorities, input from advertising contractor, and available resources	Public Affairs Committee	January 2009
2. Conduct statewide consumer and contractor research	Public Affairs Committee	January 2009
3. Identify new goals for Web site	Public Affairs Committee	January 2009
4. Develop partnerships to expand educational outreach	Public Affairs Committee	January 2009
5. Create a business practice kit for licensees to help educate consumers	Public Affairs Committee	June 2009
6. Implement an expanded public information campaign focused on the risks of hiring unlicensed operators	Public Affairs Committee	July 2009

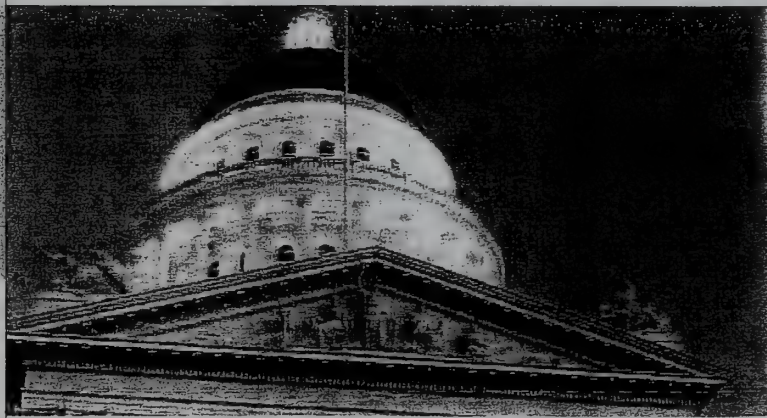
## STRATEGIC PLAN

### **GOAL 4—Ensure that statutes, regulations, policies and procedures strengthen and support Board operations.**

The Legislative Committee meets this goal by:

- Providing mechanisms for consumers to remedy problems and resolve disputes;
- Creating and maintaining a legal and regulatory framework that ensures an appropriate level of consumer protection; and
- Monitoring legislation that impacts the construction industry as it relates to public health, safety and welfare.

OBJECTIVES	LEAD RESPONSIBILITY	TARGET DATE
1. Engage industry to support CSLB efforts to obtain resources for CSLB	Legislative Committee	October 2008
2. Develop plan to recognize and partner with legislators	Legislative Committee	June 2009
3. Enact changes to mechanic's lien procedures and requirements	Legislative Committee	January 2010



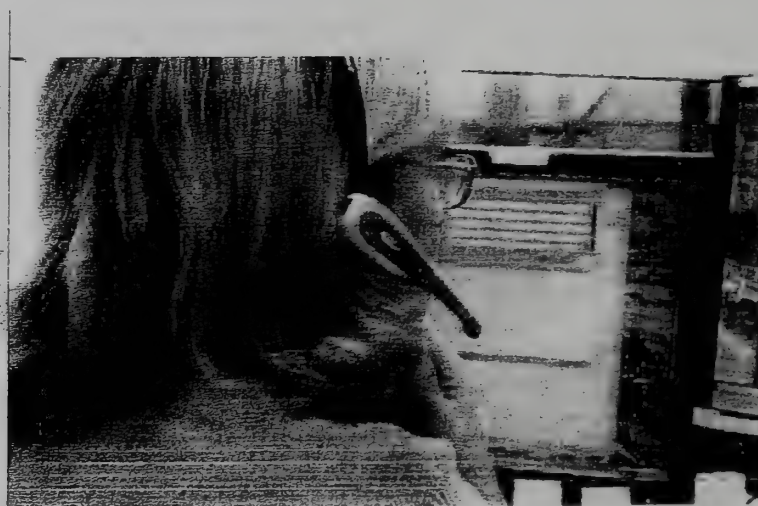


**GOAL 5—Enhance organizational effectiveness, and improve the quality of customer service in all programs.**

The Executive Committee meets this goal by:

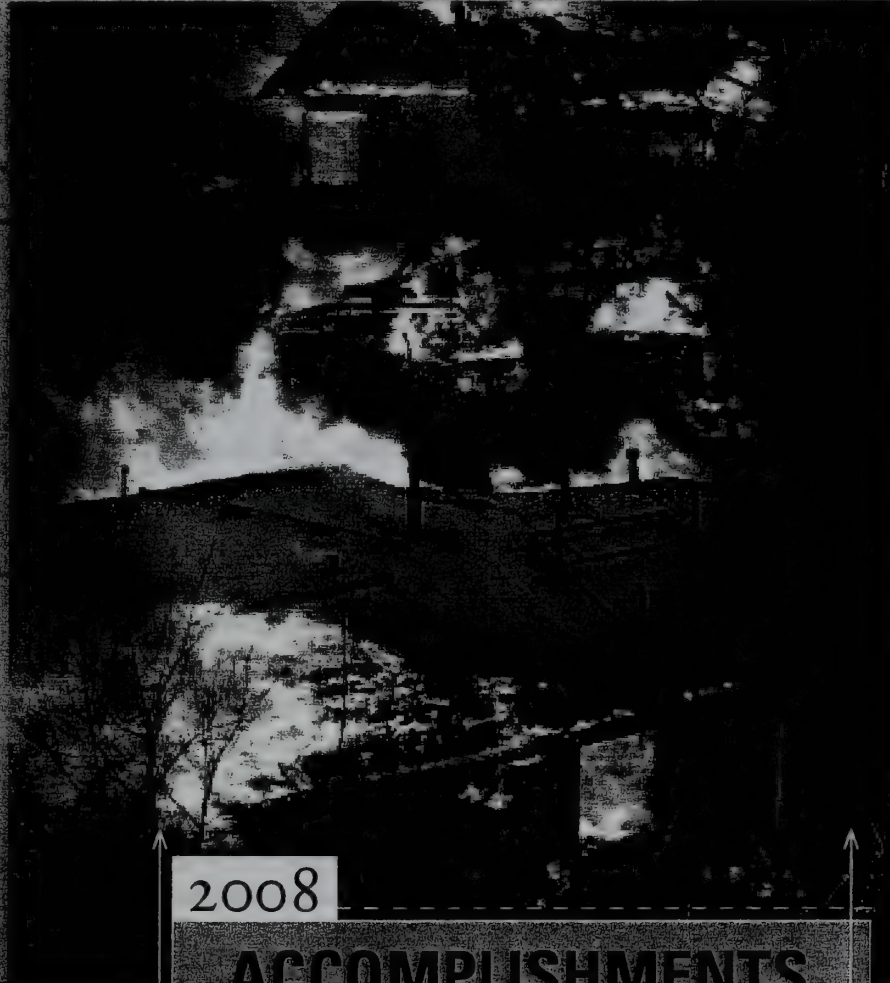
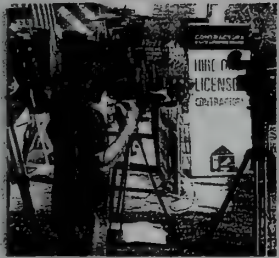
- Ensuring that CSLB has the resources it needs to achieve its mission and goals;
- Monitoring implementation of the CSLB Strategic Plan; and
- Monitoring and improving organizational effectiveness.

OBJECTIVES	LEAD RESPONSIBILITY	TARGET DATE
1. Develop long-term budget plan	Executive Committee	March 2009
2. Develop an advanced organizational development plan for all divisions	Staff	June 2009
3. Develop a succession plan for divisions	Staff	June 2009
4. Create a Web site support unit	Staff	July 2009
5. Improve the Licensing Information Center IVR system	Staff	January 2010



# CONTRACTORS STATE LICENSE BOARD

California Department of Consumer Affairs



2008

ACCOMPLISHMENTS

& ACTIVITIES





## ACCOMPLISHMENTS AND ACTIVITIES REPORT



FEBRUARY 2009

JAMES MILLER, *Public Member, Chair*

CYNTHIA MITCHELL, *Contractor Member, Vice Chair*

EDWARD "EDDIE" BARNES, *Public Member, Secretary*

ROBERT BROWN, *Public Member*

JOAN HANCOCK, *Contractor Member*

MATTHEW KELLY, *Public Member*

LOUISE KIRKBRIDE, *Public Member*

ROBERT LAMB, *Public Member*

ED LANG, *Public Member*

STEPHEN MATICH, *Contractor Member*

BERNEDETTE MEDRANO, *Public Member*

LISA MILLER-STRUNK, *Contractor Member*

BRUCE RUST, *Public Member*

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ARNOLD SCHWARZENEGGER

*Governor*

ROSARIO MARÍN

*Secretary, State and Consumer Services Agency*

CARRIE LOPEZ

*Director, Department of Consumer Affairs*

STEPHEN P. SANDS

*Registrar, Contractors State License Board*

Fall 2008 southern California wildfire cover photo courtesy of Michael Gonzalez



CALIFORNIA CONTRACTORS STATE LICENSE BOARD



# A Note from the Board Chairman

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The California Contractors State License Board (CSLB) is pleased to present this annual recap of the exceptional programs and initiatives that help meet the Board's Strategic Plan goals.

The 2008 Accomplishments and Activities Report highlights the results of each division's operations as well as solutions that are under way to enhance and continually improve CSLB's commitment to California consumers and contractors.

As highlighted by this year's cover photos, CSLB's commitment to public safety during California's 2008 wind, flood and wild fire disasters was exemplary. CSLB Enforcement staff were among the first responders following each of the state-declared disaster areas, that ravaged a third of the California's 58 counties. Northern and southern Enforcement staff assisted victims and maintained a strong presence to prevent illegal and unlicensed construction activity. The division continued to proactively pursue unlicensed activity and the underground economy, and strengthened its state and local agency partnerships. A number of high profile criminal cases kept the Enforcement division and its SWIFT unit in the news as well as during the division's many proactive enforcement efforts. Also, the division's Complaint Management unit significantly reduced its case load while improving arbitration and mediation services.

Our Licensing division continued to process a high volume yet reduced number of contractor licenses, and there was a shift in the type of applications sought. There were fewer original applicants, but more contractors changed or added different classifications to their license, and more people took out licenses for Home Improvement Salesperson—a sign of our state's changing economy and the categories of construction that are sustaining the industry. Application processing times were again reduced in 2008, and the Licensing Information Center met the Board's goal to answer calls under three minutes for a majority of the year. Continued coordination with the Department of Justice and Federal Bureau of Investigation helped to process more than 39,000 applicant fingerprint responses, part of current criminal background checks that are necessary for licensure. The division's Testing unit analyzed seven and updated 10 license examinations, and continued to expand the capacity of its seven (7) statewide testing centers.



**James Miller, Chair**



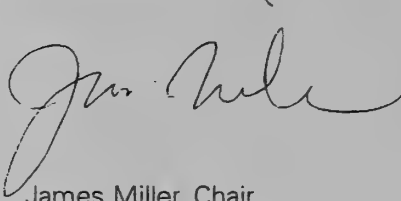
## ACCOMPLISHMENTS AND ACTIVITIES REPORT

Our Public Affairs Office helped garner ongoing network and cable broadcasting coverage of CSLB's consumer and enforcement efforts, as well as statewide media coverage of year-round efforts to protect against and educate consumers about unlicensed construction activity. CSLB's outstanding publications and consumer outreach materials have received industry awards, and the Senior Scam Stopper seminars, working with regional legislators, continue to expand throughout the state. A new Web site feature, CSLB's Most Wanted, was also launched to improve consumer awareness about unscrupulous and unlicensed operators.

CSLB's Administrative efforts have resulted in additional staffing and funding to accommodate consumer and contractor expectations, while the Information Technology division modified and enhanced the technical infrastructure, telecommunication abilities, the Web site, and improved online and automated forms.

Regardless of unforeseen economic and construction activity in 2009, I am confident in saying that CSLB's partners, statewide consumers and contractors, and fellow agencies can count on continued exemplary service from the Contractors State License Board.

My sincere thanks to all who supported and assisted the Board in 2008.

A handwritten signature in cursive script, appearing to read "Jim Miller".

James Miller, Chair



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# Leadership

A 15-member board appoints the CSLB executive officer, or Registrar of Contractors, and directs administrative policy for the agency's operations. The Board includes nine public members, five contractor members, and one labor representative. The Governor and the Legislature make the board appointments.

**James Miller | Chair | Governor Appointee | Public Member**

Jim Miller, of Big Bear Lake, was appointed to the Contractors State License Board in September 2005 by Governor Arnold Schwarzenegger. He currently serves as the Board's Chair. Since July 2007, Mr. Miller has served as Director of Building and Planning for the City of Big Bear Lake. From 2002 through 2007, he served as Director of Building and Safety for the County of Riverside. Prior to that Mr. Miller was the Development Services Director for the City of Murrietta, the Building Official for the City of Pomona and the Regional Manager and Building Inspector for Riverside County. Mr. Miller's term continues through June 1, 2009.

**Cynthia Mitchell | Vice Chair | Governor Appointee | Specialty Contractor**

Cindy Mitchell, of Shingle Springs, was appointed to the Contractors State License Board by Governor Arnold Schwarzenegger in March 2006. She currently serves as Board Vice Chair. Ms. Mitchell has served as president and chief executive officer of Citadel Tile and Marble since 1993. She is also the president and chief executive officer of GCM Business Solutions, and is a member of the North State Building Industry Association, the Ceramic Tile Institute, an appointed committee member with the Trade Builder Alliance Council of the California Building Industry Association, and a past president of the California Professional Association of Specialty Contractors. Ms. Mitchell's term continues through June 1, 2009.



## ACCOMPLISHMENTS AND ACTIVITIES REPORT

### **Edward "Eddie" Barnes** | Secretary | Senate Appointee | Public Member

Eddie Barnes, of Huntington Beach, was appointed to the Contractors State License Board by the Senate Rules Committee in October 2006 and reappointed in June 2007. His term will continue until June 1, 2011. Mr. Barnes is the Southern Regional Director of the State Building and Construction Trades Council. A veteran steamfitter with the United Association for more than 35 years, Mr. Barnes has worked on a wide variety of construction projects in positions ranging from welder to superintendent. He is an active member of the United Association Local Union 250, and was elected as the Business Manager, Business Agent and President between 1984 and 2003. He is currently a Compliance Investigator for the Los Angeles Unified School District and the City of Los Angeles Contract Compliance Program, a member of the International Association of Plumbing and Mechanical Officials, and a past member of the American Society of Mechanical Engineers.

### **Robert Brown** | Governor Appointee | Public Member

Robert Brown, of Pleasant Hill, was appointed to the Contractors State License Board in September 2005 by Governor Arnold Schwarzenegger. Mr. Brown is the Director of Corporate Affairs for AAA Northern CA, NV, & UT, where he has worked since 1999. He also served as the AAA's Media Relations Manager and Senior Manager for Governmental Affairs. Mr. Brown's consumer protection background began more than 15 years ago when he first worked as the Assistant Secretary for the State and Consumer Services Agency and then as the Deputy Director for Communications for the Department of Consumer Affairs. Mr. Brown's term continues through June 1, 2012.

### **Joan Hancock** | Governor Appointee | "B" Contractor

Joan Hancock, of Sacramento, was appointed by Governor Arnold Schwarzenegger to the Contractors State License Board in November 2007. Since 1983, Ms. Hancock has owned Her Land Enterprises, a general contracting firm. From 1977 to 1983 she co-owned Hancock & Colyer Construction. From 1980 to 1982, Ms. Hancock served as a law clerk for the Sacramento County Public Defender's Office. She is also a member of the Sacramento Mediation Center. Ms. Hancock's term continues through June 1, 2011.

### **Matthew Kelly** | Senate Appointee | Public Member

Matt Kelly, of Sacramento, joined the Contractors State License Board in April 2003 as a public member after being appointed by the Senate Rules Committee. He was reappointed in October 2005. Although his 20-year construction industry career began as a carpenter apprentice, he has since worked on a variety of commercial and residential projects and has been in construction management for a large general contractor. He currently serves as the Executive Secretary Treasurer of the Sacramento-Sierras Building and Construction Trades Council. Mr. Kelly served as Board Chair from 2006-2007. His term continues through June 1, 2009.



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**Louise Kirkbride | Governor Appointee | Public Member**

Louise Kirkbride, of Monte Sereno, was appointed to the Contractors State License Board by Governor Arnold Schwarzenegger in February 2005. Ms. Kirkbride founded and served as Chief Executive Officer of Broad Daylight, a company whose products facilitate communications between businesses and their customers through the Internet. Before that, she founded Answer Systems, a company designed to improve business-customer communications through help-desk automation. Ms. Kirkbride earned a Bachelor's and Master's degree in electrical engineering from the California Institute of Technology, where she was a member of the school's first undergraduate class to include women. She currently serves as a Trustee of CalTech, and is a member of the California Board of Accountancy. Ms. Kirkbride's term continues through June 1, 2012.

**Robert J. Lamb II | Assembly Appointee | Public Member**

Robert Lamb, of Cypress, was appointed to the Contractors State License Board by Assembly Speaker Fabian Núñez in May 2006. Mr. Lamb is a certified plumber and pipefitter. He has been a member of the United Association for more than 29 years, has held numerous positions in the construction industry, and worked on a variety of construction projects. Mr. Lamb was the Business Manager and Financial Secretary/Treasurer for the Plumbers and Steamfitters U.A. Local 582 in Santa Ana and was also a representative for the Southern California Pipe Trades District Council 16. Mr. Lamb earned a Bachelor's degree in union leadership and administration from the National Labor College in Silver Springs, MD. He currently serves as a Special Representative for the United Association of Plumbers and Steamfitters. In October 2008, Assembly Speaker Karen Bass reappointed Mr. Lamb to CSLB for a term that continues through June 1, 2012.

**Ed Lang | Governor Appointee | Public Member**

Ed Lang, of Rancho Cordova, was appointed to the Contractors State License Board by Governor Arnold Schwarzenegger in January 2007. Mr. Lang retired as Supervisor of the Corporation Collections Unit for the California Franchise Tax Board, where he worked in various positions from 1980 to 2003. Previously, he was an adult education instructor for the Folsom Cordova Unified School District from 1976 to 1982, and served in the U.S. Air Force from 1960 to 1980. Mr. Lang serves on the Board of Directors for the InnerCity Housing Corporation and HELPS Family Foster Agency, and is a member of the American Association of Retired People. Mr. Lang's term continues through June 1, 2010.

**Stephen Matich | Governor Appointee | "B" Contractor**

Steve Matich, of Yucaipa, was appointed to the Contractors State License Board by Governor Arnold Schwarzenegger in April 2006. Mr. Matich has served as president of Matich Corporation, a family-owned construction business specializing in engineering contracting since 1992 and been employed by the company since 1980. In addition,

## ACCOMPLISHMENTS AND ACTIVITIES REPORT

A plan was implemented in January 2006 to help ERs maintain an average of 10 complaint closures per month. At that time, ERs' monthly average was a total of 8.8 complaint closures each. In 2007, the ERs increased the complaint closure monthly average to 10.85 each. In 2008, the average closure rate per ER increased to 12.

CALENDAR YEAR	NUMBER OF PENDING COMPLAINTS	COMPLAINTS AGED OVER 1 YEAR	COMPLAINTS AGED OVER 270 DAYS
2004	5,031	134	252
2005	5,435	114	312
2006	4,173	69	116
2007	4,516	34	141
2008	4,298	15	164

### Restitution

Enforcement staff continued the ongoing mission of protecting the public and, in doing so, obtained substantial restitution for consumers in both monetary payments and corrective work. In 2008, consumers who complained to CSLB received restitution of more than \$14.5 million, not including civil court judgments. Total restitution paid to consumers during 2008 is broken down, as follows:

	MONIES PAID	CORRECTIONS
Complaints Settled	\$10,163,912	\$1,120,464
Citations	\$172,709	\$13,314
Arbitrations	\$3,065,908	n/a



## Arbitration

Since October 2003, the Arbitration Mediation Conciliation Center (AMCC) has served as CSLB's arbitration provider. AMCC has heard more than 3,280 arbitration proceedings and has rendered individual monetary decisions of up to \$50,000. During 2008, AMCC received a 94% satisfaction rating and continued to maintain efficient cycle times, averaging 54 days from assignment to award. The following represents specific survey ratings, both historical and current (on a scale from 1 to 5, 5 being the highest level of satisfaction):

Year	CSLB Prompt Response	AMCC Efficient Coordination	AMCC Schedule	AMCC Case Facilitator Overall	AMCC Professionalism	AMCC Courtesy	AMCC Efficiency	Arbitrator Overall	Arbitrator Professionalism	Arbitrator Knowledge	Satisfaction w/Process
2007	4.39	4.39	4.59	4.6	4.75	4.8	4.78	4.72	4.86	4.89	4.82
2008	4.49	4.68	4.72	4.82	4.87	4.87	4.85	4.89	4.94	4.88	4.72

The mandatory arbitration award limit remains at \$12,500, and the voluntary arbitration limit remains at \$50,000.

During 2008 AMCC performed a total of 782 arbitration proceedings, as follows:

ARBITRATION PROCEEDINGS	
Mandatory Arbitration	630
Voluntary Arbitration	152
TOTAL	782

## Mandatory Settlement Conferences

Mandatory settlement conferences (MSCs) continued to realize cost savings for Enforcement during 2008, significantly lowering expenses for Office of the Attorney General (AG) and Office of Administrative Hearing (OAH) case support. Further, the percentage of settlements increased from approximately 60% in 2007, to approximately 65% in 2008. MSCs resolve administrative disciplinary actions without incurring the cost of a formal hearing. Enforcement saved over \$1.5 million in AG costs alone during 2008.

### 2008 MANDATORY SETTLEMENT CONFERENCES

Cases Scheduled for MSCs	478
Cases Settled	310
Failure to Appear by Respondent	53

Cases where the respondent fails to appear are grouped together and scheduled for an Administrative Hearing. During the Administrative Hearing, a case can be handled as a default judgment decision in accordance with the Administrative Procedures Act.

## Proactive Enforcement

With the mounting economic hardships that continue to trouble Californians, it is vital to educate consumers on how to make informed choices when hiring a contractor and leveling the playing field for legitimate, licensed contractors whose businesses suffer from unfair competition. Once considered a civil matter, more and more prosecutors are stringently enforcing construction-related crimes, especially crimes against the elderly. However, it is said that "an ounce of prevention is worth a pound of cure," and the Enforcement Division made great strides during 2008 to prevent both consumers and legitimate licensees from being harmed by fraudulent and unlicensed operators.

Throughout 2008 the Enforcement Division improved its proactive enforcement by enhancing and increasing its partnerships, and finding creative ways to join forces with industry organizations, law enforcement, and state and local agencies. Many of these new alliances resulted in joint enforcement actions.





## Disaster Response

California faced more than its share of natural disasters during 2008, including storms, floods, and devastating wildfires that wreaked havoc on both the northern and southern regions of the state. Property damage was extensive and thousands of homes were destroyed. Enforcement was among the first responders, and staff immediately sought to protect distraught property owners from being further victimized by unlicensed and unscrupulous operators.

While violation of Business and Professions (B&P) Code Section 7028 (contracting without a license) is a misdemeanor, under B&P Code Section 7028.16, contracting without a license in a declared disaster area is a felony. Enforcement staff quickly mobilized as each disaster occurred to help service Local Assistance Centers (LACs), team with emergency services representatives to survey damage, conduct outreach to victims, and post CSLB disaster warning signs to would-be illegal operators. The following summarizes CSLB's response and enforcement actions in declared disaster areas during 2008:

### Northern California Storm Damage Sweeps

Northern Statewide Investigative Fraud Team (SWIFT) ERs mobilized in response to gale-force storms that ravaged much of northern California in early January, canvassing for unlicensed activity and warning area homeowners about the importance of hiring licensed, legitimate contractors for their storm damage repairs. Governor Schwarzenegger declared a state of emergency in several northern California counties that suffered severe damage and extended power outages. Staff conducted six sweep and survey operations in the affected counties of Sutter, Yuba, Sacramento, Solano, Yolo and Butte throughout January, teaming up with building departments and emergency services representatives to survey damage and conduct public outreach, distribute disaster pamphlets, and post CSLB disaster warning signs throughout the storm-damaged regions.



### **CSLB Responds to Wildfire Victims**

Hundreds of wildfires raged throughout California in May, June, July and August. On June 28, President Bush declared a state of emergency and ordered federal aid to supplement state and local response efforts in seven counties struck by wildfires: Butte, Mendocino, Monterey, Santa Clara, Santa Cruz, Shasta and Trinity. As of June 27, the Office of Emergency Services had established LACs in two northern California counties: Santa Clara

and Butte. As new fires broke out, Governor Schwarzenegger subsequently declared additional states of emergency in Humboldt, Inyo, Kern, Mariposa, Plumas, and Santa Barbara Counties.

In response, SWIFT mobilized quickly and reached out to victims in the fire areas and LACs, posting warning signs, conducting proactive sweep operations, and providing a visible and vigilant presence to prevent and prosecute unlicensed operators, as follows:

#### **Butte County**

SWIFT staff conducted a total of four sweep operations in the fire-ravaged areas of Butte County during the months of June and July, in the communities of Paradise, Oroville, Palermo, Kelly Ridge and Concow. These operations resulted in the issuance of five citations to unlicensed operators, one notice to appear (NTA) and nine written violation warnings. An additional five suspects were referred to the Butte County District Attorney (DA) for criminal prosecution related to contracting in a disaster area without a license.

#### **Santa Barbara County**

The Gap Fire, which started July 1 in the Lizard's Mouth area of West Camino Cielo, Santa Barbara County, burned 9,443 acres and destroyed four outbuildings. Southern SWIFT staff responded by conducting a July 30 sweep of the affected areas. SWIFT staff visited 49 sites, issuing three citations and four warning letters.

#### **Southern California**

In November, wildfire struck again, this time in the southern California communities of Sylmar, Anaheim Hills, Yorba Linda, Chino Hills, Corona, and Santa Barbara. Southern SWIFT ERs fanned out in the fire-damaged areas throughout November, canvassing

affected regions and reaching out to homeowners whose properties were damaged or destroyed in the fires. Staff checked licenses, distributed CSLB informational materials, and posted disaster warning signs throughout the fire areas.

On December 10, Southern SWIFT staff returned to the Sylmar area to conduct undercover stings for unlicensed activity in two separate fire-zone residences. SWIFT staff partnered with Department of Insurance investigators and the Los Angeles Police Department (LAPD) for the operation. Two suspects were arrested during the stings for contracting without a license in a disaster area. An additional eight suspects were caught contracting in the disaster zone without licenses; seven of those also faced illegal advertising charges. All eight of those suspects were referred to the Los Angeles DA for criminal prosecution.

#### **Statewide Investigative Fraud Team**

Throughout 2008, SWIFT continued to combat the underground economy by joining forces with an increasing network of enforcement partners and conducting a record number of undercover operations that netted an unprecedented host of unlicensed and illegal operators.

SWIFT conducted nearly 150 sting and sweep operations during 2008, breaking previous records and resulting in 1,389 legal actions, including NTAs and citations, as well as the arrest and booking of 61 individuals. An additional 266 follow-up cases were opened as a result of these operations, many of which resulted in the issuance of additional administrative citations or referrals for criminal prosecution.

SWIFT performed a total of 48 sting operations, in partnership with law enforcement, DAs, building departments, industry leaders, and other state agencies. These operations targeted unlicensed contractors, repeat offenders and wanted criminals working illegally in the construction field.

In October, SWIFT partnered with the Los Angeles City Attorney's Office (LACA), the Plumbing-Heating-Cooling Contractors Association (PHCC), the Department of Toxic Substances Control, and the Department of Consumer Affairs (DCA) to perform a highly



**SWIFT conducted nearly 150 sting and sweep operations during 2008, breaking previous records.**



## ACCOMPLISHMENTS AND ACTIVITIES REPORT



successful 2-day sting operation in Atwater Village that nabbed a total of 27 unlicensed contractors and received extensive media coverage.

Undercover stings conducted in 2008 resulted in the following:

- 967 suspects issued NTAs for contracting without a license, illegal advertising, and workers' compensation (WC) violations
- 108 administrative citations issued to licensed and unlicensed individuals for advertising, licensing, WC, and aiding and abetting violations
- 61 suspects arrested and booked on outstanding warrants for crimes, including sexual assault, child molestation, drug and weapons convictions, grand theft, elder abuse, and previous illegal construction activities

During 2008, SWIFT conducted a total of 92 sweep operations, including 12 sweeps as a member of the Economic and Employment Enforcement Coalition (EEEC), and a record 80 sweeps conducted both independently and with various partner agencies separate from EEEEC. Sweeps were conducted at various locations in El Dorado, Fresno, Los Angeles, Merced, Orange, Riverside, Sacramento, San Bernardino, San Diego, Santa Clara, Stanislaus, Sutter, Ventura, and Yuba Counties.

In November, staff participated in a joint sweep operation sponsored by the Employment Development Department (EDD) and the Board of Equalization (BOE) in Los Angeles. The operation was prompted by BOE Chair Judy Chu's launch of a new Underground Economy Task Force (UETF).

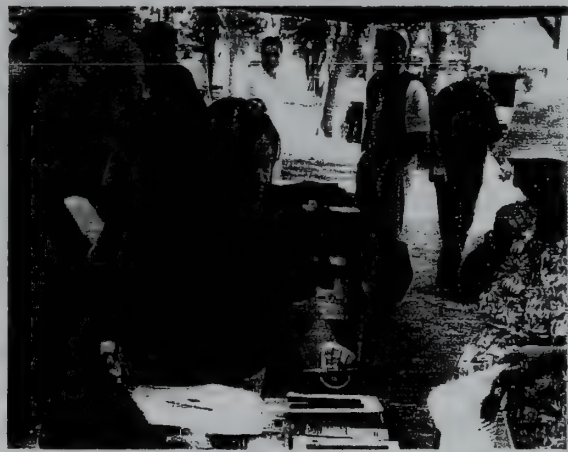
The UETF's mission is to combat the underground economy in the greater Los Angeles region by adding a new enforcement criteria: checking for compliance with sales and use taxes as part of the overall sweep inspections. Also participating in the sweep were the LAPD, the Division of Labor Standards Enforcement (DLSE), and the Division of Occupational Safety and Health (DOSH).

### **Sweeps performed in 2008 achieved the following:**

- 2,498 active construction sites inspected throughout the state, checking for compliance with license, WC, and employment laws
- 2,613 entities checked for appropriate licensure
- 311 administrative citations issued to licensed and unlicensed individuals for advertising, licensing, WC, aiding and abetting, and other violations

### **Outreach**

One of the most effective methods of protecting consumers, initiating new partnerships, and encouraging compliance with licensing and labor laws is to reach out to industry, law enforcement and community groups. During 2008, SWIFT staff made a total of 59 public presentations. The events provided the opportunity to educate and inform industry leaders, senior citizens, homeowner associations, building departments and consumer fraud investigators about CSLB's mission and methods, as well as how to hire a contractor and comply with the law. The benefit of speaking directly to these groups is the "trickle down" effect of education: the information shared with association leaders and community groups is then passed on to other members, using grassroots communication to multiply CSLB's message. Often, these outreach events result in new partnerships and subsequent joint enforcement activities.



Some of the groups that SWIFT staff reached out to during 2008 included:

- Plumbing-Heating-Cooling Contractors Association chapters
- Painting & Decorating Contractors Association chapters
- Work Preservation Fund
- Roofing Contractors Association of California
- National Association of the Remodeling Industry (NARI)
- Valley Contractors Exchange (Sutter/Yuba Counties)
- California Landscape Contractors Association

- Foundation for Fair Contracting
- Community Agency Multidisciplinary Elder Team (CAMET)
- Los Banos Rotary Club
- Senator Jenny Oropeza's Senior Protection Forum
- "Set for Life" Senior event



### **Economic & Employment ENFORCEMENT COALITION**

### **Economic & Employment Enforcement Coalition (EEEC)**

EEEC, launched by Governor Arnold Schwarzenegger in July 2005, teams CSLB with the U.S. Department

of Labor, and California Department of Industrial Relations (DIR), DLSE, DOSH and EDD to perform proactive undercover sweeps of active construction sites throughout California.

In 2008, CSLB and its coalition partners continued to expand the reach and effectiveness of the formal EEEEC sweeps by adding not only a concurrent sting, but also a second simultaneous sweep operation in the opposite end of the state during each formal EEEEC operation. This expanded action not only augmented CSLB's enforcement and presence in the designated geographical region, but also dramatically increased the sheer numbers of illegal operators nabbed during the dual operations.

On February 14 and 15, 2008, Southern SWIFT ERs participated with their partners in a two-day formal EEEEC sweep operation covering Riverside and San Bernardino Counties. At the same time, other members of the Southern SWIFT team also partnered with investigators from the Toxic Substances Control Board, Yucaipa Code Enforcement, the San Bernardino County DA's office and local law enforcement to conduct a simultaneous sting operation in the City of Yucaipa. It was an eventful operation, featuring the capture of several wanted individuals. Three of the suspects were registered sex offenders; one of these individuals was a habitual child molester. Two of the other suspects were wanted on outstanding warrants at or exceeding \$150,000.

While their southern California counterparts were busy with the combined sting and sweep operations, Northern SWIFT ERs conducted a concurrent EEEEC sweep of the Citrus Heights region on February 14.

The North-South EEEEC operation proved so successful, the statewide approach became standard practice for the remainder of 2008: a one-day EEEEC sweep was conducted in the north during major southern EEEEC operations, and vice versa.



## Summary of 2008 Formal EEEEC Sweeps

SWIFT conducted a total of 12 formal EEEEC construction sweeps during 2008, resulting in:

- 707 construction site inspections
- 956 entities checked for licensure and compliance with labor and employment laws
- 99 administrative citations issued to licensees and non-licensees

## Independent EEEEC Operations

In addition to the formal EEEEC operations conducted with Coalition partners, SWIFT's EEEEC investigators also conducted an additional 23 stings and 44 sweep operations independently as part of CSLB's ongoing proactive enforcement mission. The 23 separate stings conducted by EEEEC investigators during 2008 resulted in the following:



- 531 appointments set with targeted suspects
- 376 NTAs issued
- 17 administrative citations issued to unlicensed operators
- 5 administrative citations issued to licensees

The 44 sweep operations conducted by EEEEC staff in addition to the formal EEEEC sweeps with Coalition partners resulted in the following actions:

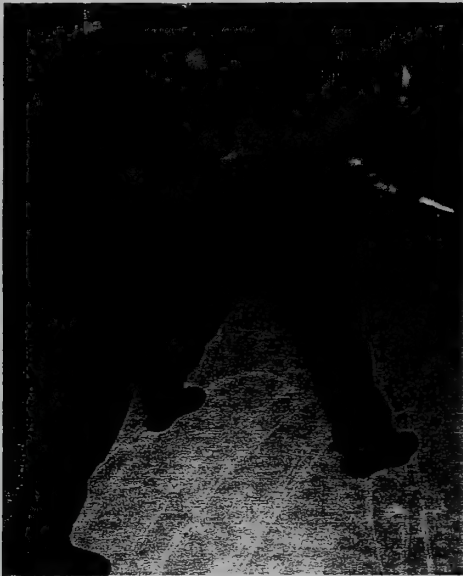
- 918 inspections of construction sites
- 1,095 entities checked for licensure compliance
- 105 administrative citations issued to unlicensed operators
- 7 administrative citations issued to licensees

## Criminal Investigation Task Force

The Criminal Investigation Task Force (CITF) was formed in December 2007 to combat predatory contractors that prey on unsuspecting consumers, often the most vulnerable members of society: the elderly and poor. CITF's first assignment was to investigate the criminal activities of certain service and repair contractors that used misleading

## ACCOMPLISHMENTS AND ACTIVITIES REPORT

advertisements and were the subjects of hundreds of consumer complaints throughout the state. The investigation proved to be complex, involving more than a dozen licensed contractors that used a common call center. The companies solicited business through multi-million dollar advertising campaigns, including full-page ads in telephone directories.



Further complicating the investigation, whenever CSLB revoked or suspended one of the licenses, the defendants continued to operate using "sleeper companies" with "rented" license numbers. Harmed consumers were unable to seek recourse for poor workmanship, incomplete work, and other issues that arose on their projects. If a consumer withheld or canceled a payment, the defendants retaliated by filing a lien against the homeowner's property.

Undaunted, CITF partnered with other state agencies and local law enforcement to conduct numerous sting operations throughout 2008, targeting suspected fraudulent service and repair contractors to identify technicians and techniques

used to defraud consumers. Often, investigators did not identify themselves during the first sting, and technicians were arrested and/or issued Notices to Appear during subsequent sting operations.

CITF's efforts paid off when, on November 21, 2008, San Diego Superior Court Judge Joan M. Lewis issued a Temporary Restraining Order (TRO) that shut down their operations and froze the bank assets of several contracting firms, and froze personal belongings, including two properties, two helicopters, and three vehicles.

The TRO was modified by Judge Lewis on December 3, 2008, allowing one firm to engage in only electrical repair and unfreezing the bank assets after a separate account was set-up with \$3 million as "security against any future consumer restitution, fines, damages or costs" resulting from the suit. The personal belongings remained frozen pending the January 30, 2009 hearing. DLSE participated in serving the search warrant and left them with a \$100,000 citation for failing to supply WC insurance.

The AG's office is suing the defendants under California B&P Code Sections 17200 and 17500 for engaging in unfair business practices and deceptive advertising. The defendants can be fined \$2,500 for each violation found under the Codes. The DLSE citation became a final order in December, and the Labor Code (LC) violations are included in the AG's 17200/17500 action. In addition, DAs in several counties have prosecuted and obtained convictions against several of the technicians employed by these companies.

In November 2008, the AG's office also obtained a court order in Los Angeles to shut down some of the toll-free numbers listed in the defendants' Internet and telephone directory ads. The Los Angeles DA's office has also filed charges against the defendants for state income tax evasion. EDD is considering a possible audit to determine if the defendants have properly reported employees for all tax purposes.

CSLB is encouraging consumers who may have been ripped off during the last four years to file a complaint and is establishing a toll-free number specifically for those victims.

### **Memoranda of Understanding**

CSLB has been a party to memoranda of understanding (MOUs) for the purpose of sharing enforcement information with EDD, DOSH, and DLSE. During 2008, CSLB worked with each agency to further enhance the existing MOUs, thus strengthening enforcement of labor, tax, and licensing laws.

Realizing that other agencies also possess important enforcement information, a system was developed and implemented to allow other regulatory agencies to notify CSLB of violations committed by licensed or unlicensed contractors. In addition, new MOUs have been executed with Department of Industrial Relations' (DIR) Office of the Director/Legal Unit (ODL) as well as with the Department of Transportation, commonly referred to as Caltrans, further expanding CSLB's ability to enforce Contractors License Law.

Further, CSLB is now receiving final tax actions against licensed contractors from the Franchise Tax Board to assist with the collection of outstanding taxes.

Following are summaries of the MOUs and achievements:

#### **Employment Development Department**

Under the terms of the previous MOU, CSLB's ERs and EDD agents conduct monthly field inspections as part of a joint Employment Enforcement Task Force (EETF); however, pursuant to the new MOU, those field inspections increased to a minimum of two per month.

CSLB sends statistical information to EDD on a quarterly basis, and EDD agrees to investigate underground economy complaints that are not suitable for SWIFT or EETF on-site inspections that are against unlicensed contractors who have six or more employees and are suspected of operating in the underground economy.

In addition, CSLB will provide EDD query access to CSLB's Licensing System, including licensing data, pending application data, and the CSLB backlog table pursuant to agreed security provisions.



## ACCOMPLISHMENTS AND ACTIVITIES REPORT

EDD continues to refer unresolved final tax liability cases to CSLB, which result in the automatic suspension of those licenses until the judgments are satisfied. During 2008, EDD resolved over \$4.7 million more in outstanding tax liabilities than during the previous year.

Finally, EDD continues to refer cases to CSLB involving tax and employment violations that resulted in fraud penalties for possible disciplinary action against the licensee.

### **2008 OUTSTANDING TAX LIABILITY CASES**

915 outstanding tax liability cases referred to CSLB by EDD

786 licenses suspended by CSLB

667 licenses subsequently reinstated for compliance

\$15,499,833 in outstanding tax liabilities resolved

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### **California Division of Occupational Safety and Health**

Under the previous agreement, DOSH referred reports of contractors found in violation of safe workplace provisions of the Health and Safety (H&S) Code that have resulted in a serious workplace injury or fatality for appropriate CSLB action against the license.

Under the revised agreement, when any investigation of a construction industry employer is being conducted and DOSH determines that the employer has acted willfully or with gross negligence to violate an occupational safety or health standard, and the same act also constitutes an obvious violation of standards to which CSLB requires licensed contractors to adhere, DOSH will make an early referral to CSLB's SWIFT Program Manager.

DOSH also will assist CSLB in achieving judicial revocation of licenses in DOSH-initiated criminal proceedings.

CSLB provides DOSH with the final disposition on all referrals, as well as a summary of administrative disciplinary action taken against a licensee as a result of a DOSH referral.

Finally, DOSH is responsible for issuing permits for specified construction activities that are predicated upon the applicant employer having an appropriate contractor's license; therefore, CSLB notifies DOSH of the revocation of any contractor's license on a monthly basis.

### **2008 DOSH REFERRAL RESULTS**

122 complaints referred to CSLB for serious H&S Code violations

30 DOSH referrals resulted in disciplinary action imposed by CSLB

12 DOSH referrals resulted in formal warnings to the licensees

46 DOSH referrals are currently pending investigation (as of this publication date)

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### **Division of Labor Standards Enforcement**

The prior MOU provided that DLSE forward documentation of Labor Code (LC) violations that result in a civil or criminal case and/or violations that result in a judgment for unpaid wages or penalties. CSLB has authority to obtain judicial suspension or revocation of the license when notified of DLSE cases referred for criminal prosecution.

The enhanced MOU, signed in November 2008, provides for DLSE to forward to CSLB copies of all final findings by the Labor Commissioner of a willful or deliberate violation of any provision of the LC by a licensed contractor, so that CSLB can initiate disciplinary action as required by B&P Code Section 7110.5.

#### **2008 NOTICE OF WAGE CLAIM SUSPENSIONS**

436 DLSE Wage Claim cases referred to CSLB

313 contractors' licenses remain under judgment suspension

127 licenses subsequently reinstated for compliance

\$875,132 in unpaid wage claims resolved

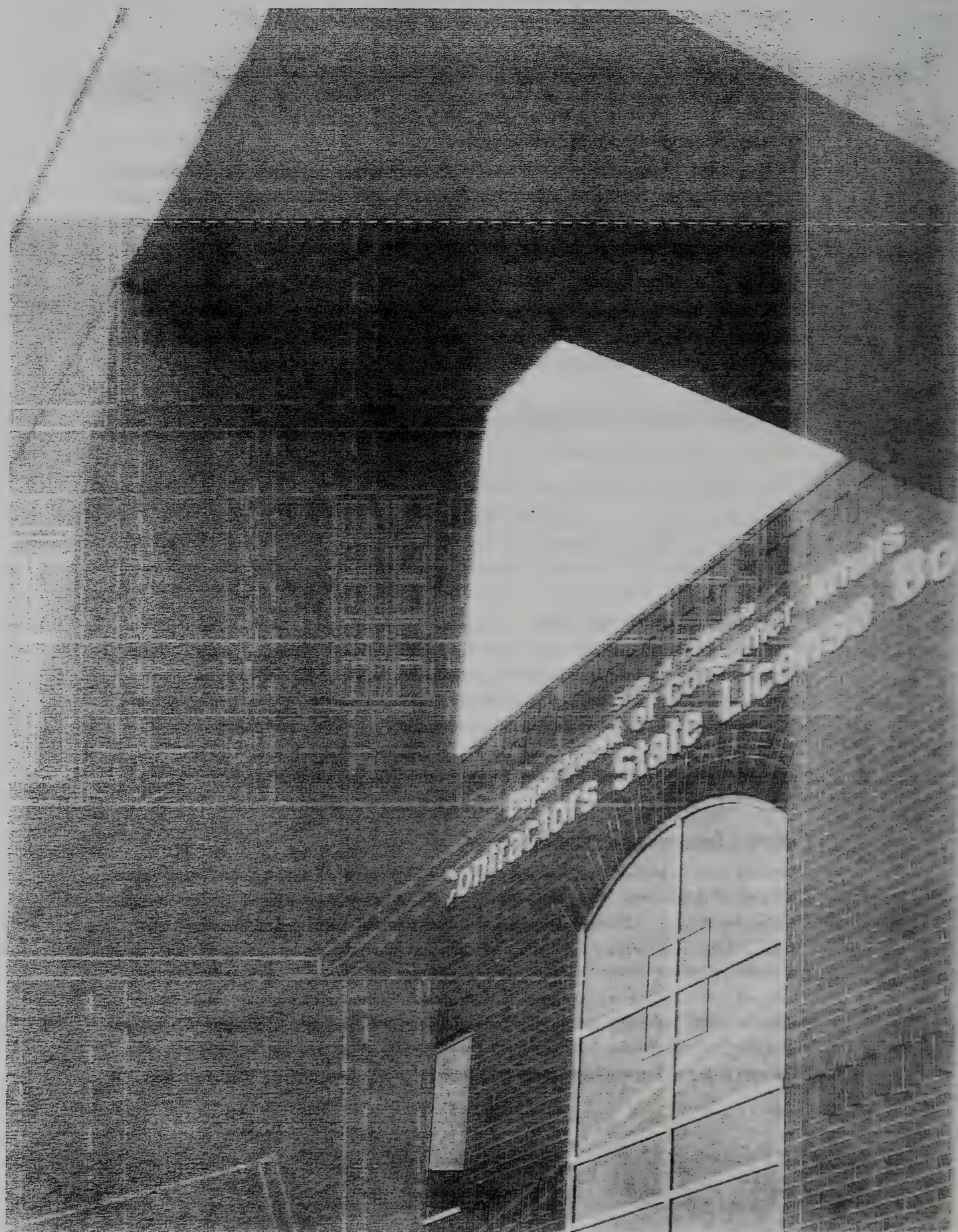
### **Office of the Director Legal Unit**

A first ever MOU between the DIR's ODL and the CSLB was signed on August 6, 2008. ODL administers the Uninsured Employers Benefits Trust Fund (UEBTF) as well as investigates uninsured employers and their lack of WC insurance. Under this agreement, ODL refers suspected unlawful activity by contractors or unlicensed contractors to CSLB, and CSLB, in turn, provides ODL with the final disposition results on all referrals. In addition, ODL is provided access to the CSLB Licensing and Information System database.

### **California Department of Transportation**

In another first, an MOU was finalized between CSLB and the Department of Transportation (Caltrans) on September 19, 2008. Caltrans administers contracts for \$16 billion in funds for improvements to California highways, which are public works projects subject to Public Contract Code Sections 4100-4100, the Subletting and Subcontracting Fair Practices Act (Act). Under the MOU, Caltrans refer serious or willful violations of the Act and WC violations to CSLB for investigation. CSLB will conduct investigations into violations of the Act and WC and notify Caltrans of the investigations' results. Each agency will share information, to the extent allowed by law, to assist each other in any investigations for violations of the Act, unlicensed contractor activity, or violation of WC requirements.





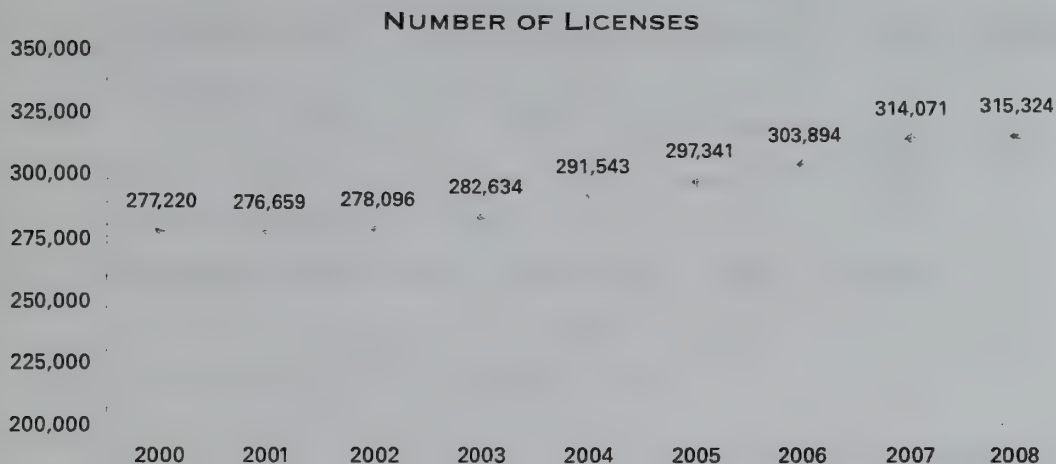




# Licensing

## Number of Licenses

The number of licenses continues to increase. As of December 31, 2008, there were 315,324 licenses, about a .4% increase over 2007. Of those, 254,114 were "Active," while 61,210 were "Inactive."



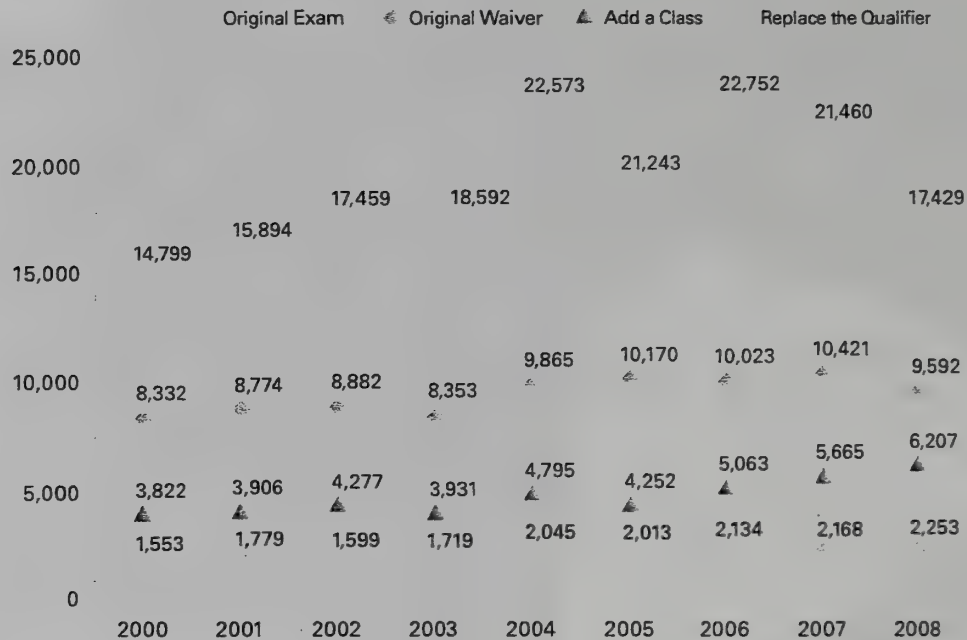
## Workload

Until 2008, the number of applications received by CSLB had steadily increased. While the CSLB saw a greater increase in original exam applications in 2004, it is believed that this was a result of the implementation of new fingerprinting requirements in January 2005. The chart on top of page 26 displays the number of license applications received for calendar years 2000 through 2008. A total of 39,714 applications were received in 2007 and 35,481 were received in 2008, an 11% decrease. Original applications posted a 15% decrease while add class and replacing the qualifier applications posted an 8% increase.



# ACCOMPLISHMENTS AND ACTIVITIES REPORT

## APPLICATIONS RECEIVED BY CALENDAR YEAR



## Processing Timelines

With the use of overtime, temporary help, and the redirection of staff, the Licensing Division has been able to maintain acceptable processing levels. The following table indicates the average length of time it took for applications to be pulled for processing in calendar years 2007 and 2008.

TYPE OF APPLICATION/DOCUMENT	WEEKS BEFORE BEING PULLED FOR PROCESSING	
	2007 AVERAGE	2008 AVERAGE
Original Exam	2.7	1.4
Original Waiver	4.0	2
Add a Class	1.6	3
Replace the Qualifier	1.8	3.2
Home Improvement Salesperson	2.3	2.5
Renewal	1.8	1.8
Contractor Bond/Bond of Qualifying Individual	1.3	.8
Workers' Compensation Certificates and Exemption	0.6	1.3



## Statistical Reporting and Analysis Project

In November 2005, the Application Disposition Report was placed into production. This report provides the number of applications received within a fiscal year and the final disposition of those applications, regardless of the year they were processed. This report allows staff to monitor the disposition of applications and identify any applications that may need special attention.

The following chart illustrates the number of applications received July 1, 2007, through June 30, 2008, (FY 2007/08) and the disposition of those applications.

TYPE OF APPLICATION	FY 2007/08			
	RECEIVED	ISSUED	VOID	PENDING
Original Exam	19,278	10,818	4,670	3,790
Original Waiver	10,432	8,241	1,966	225
Add a Class	6,075	4,256	1,308	511
Replace the Qualifier	2,235	1,712	458	65
Home Improvement Salesperson	5,518	2,449	2,906	163
Change of Officers	2,295	1,407	828	60

**Note:** Data taken from TEALE Report 724; Run Date: January 1, 2009

There are many reasons for an application to be "pending." These include, but are not limited to:

- The applicant not passing the exam, but still within the 18-month time period during which he/she must pass the examination;
- The application is out for investigation or has not been cleared by the Criminal Background Unit; or
- Final documents or fees have not been submitted.

The Licensing Division continues to work closely with the Board's Information Technology staff to develop reports that will be used to determine necessary application processing improvements.

## Applications Updated

In May 2008, CSLB staff revised seven of its most-used applications for licensure, registration, and certification. Some of the important changes included the addition of red ink throughout the application to highlight important text; addition of a disclaimer about schools; addition of statements indicating that the Certification of Work Experience form ("work cert") may be rejected if it contains strikeouts or modifications that may compromise the validity of the work cert and that all corrections on the work cert must be initialed by the certifier; and revision of the signature statements to indicate that the applicants authorize the Franchise Tax Board (FTB) to provide CSLB with required tax information pursuant to Business and Professions Code Section 7145.5. CSLB has worked with FTB on this last item. In an effort to ensure that all future applicants sign the new statement, CSLB established December 31, 2008, as the cut-off date for accepting older versions of the applications. Effective January 1, 2009, only the May 2008 version (or later versions) will be accepted by CSLB.

## Fingerprinting

In January 2005, CSLB began implementation of its fingerprinting requirements for license applicants. The program was fully implemented in April 2005. All individuals listed as personnel on an original application, an application to add a classification to an existing license, an application to replace the qualifier, an application to report new officers, and an application for registration as a Home Improvement Salesperson are required to submit fingerprints. Applicants for a Joint Venture license are not required to submit fingerprints. Fingerprints are compared to the records of the California Department of Justice and the Federal Bureau of Investigation to determine whether a criminal history exists. CSLB staff review all criminal convictions to determine whether the crime is substantially related to the duties, qualifications, or functions of a contractor and to determine whether the applicant has demonstrated his/her rehabilitation.

In the latter half of 2007, CSLB's Criminal Background Unit fine-tuned its review and communication procedures, which helped to significantly reduce the delays that had been experienced by applicants who needed to have their convictions reviewed. For the majority of 2008, the timelines were held at less than 30 days, often as low as one to two weeks.

### 2008 FINGERPRINT STATISTICS

39,526	Total number of applicants with fingerprint responses from the Department of Justice and Federal Bureau of Investigation
6,831	Number of applicants identified with a criminal history
75	Number of applicants denied licensure due to criminal convictions
188	Probationary Licenses

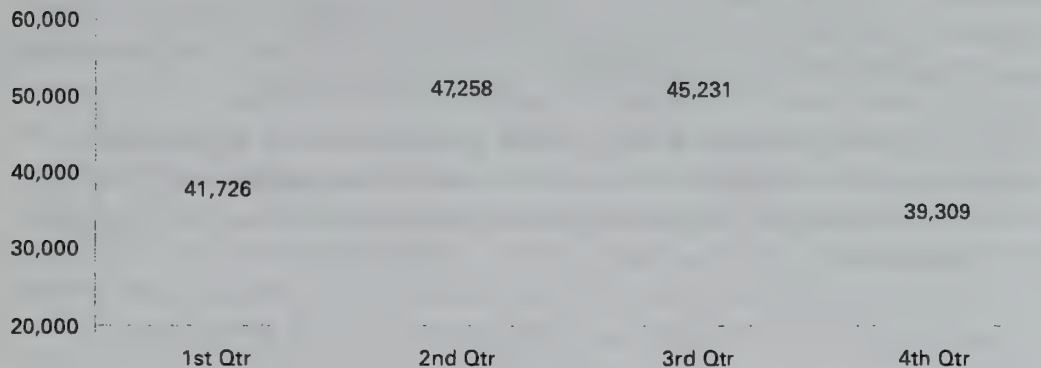


## Licensing Information Center

CSLB has continued efforts to bolster its Licensing Information Center (LIC) by streamlining workload, becoming more customer-friendly, and allowing more callers to reach an agent by opening up all LIC queues. Callers placed in a queue have the choice of either waiting for an agent or hanging up and calling back later.

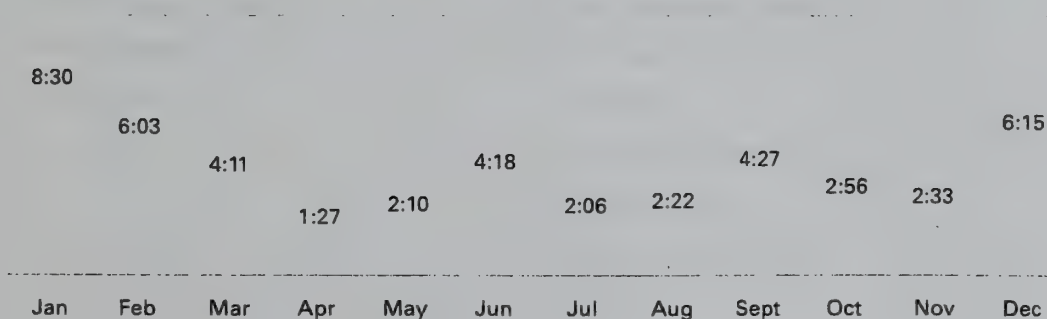
**Calls Answered**—The following chart illustrates the number of calls answered by LIC staff in 2008. A total of 182,432 calls were answered in 2007 and 173,524 calls were answered in 2008, a 5% decrease.

**CALLS ANSWERED CALENDAR YEAR 2008**



**Average Wait Time**—The average wait time for callers in 2008 was 3:56 minutes. However, for a majority of the year (March to November), the average wait time was 2:56 minutes which met the Board's goal to answer calls in under three (3) minutes.

**AVERAGE WAIT TIME—CALENDAR YEAR 2008**



### **Employee Orientation/Training**

The Licensing Information Center established a new position to serve as a trainer and expert resource to the LIC staff. This position is responsible for updating internal Call Center policies, developing Call Center scripts for consistency, training new agents, and cross training existing staff.

This set in motion the opportunity to develop a comprehensive training program for all CSLB employees. All new hires and any current staff members wanting a "brush-up" can attend the week-long training module.

The philosophy behind the class presentation is "the big picture." The 40-hour class covers a wide range of CSLB licensing transaction and enforcement subjects, including an overview of CSLB license law, the functions and responsibilities of the different units within the Board, licensing and enforcement programs, procedures and updates, as well as tips to assist staff in developing excellent customer service skills.

The training classes have been a huge success, with approximately 40 graduates to date. The class enjoys the Q & A, hands-on work assignments, puzzles and quizzes that have been incorporated into the training. Anyone who wants to attend is encouraged to make a reservation.

# TESTING

## Examinations

The Testing Division is responsible for ensuring that the Board's examinations are current and relevant. An occupational analysis of each licensing classification is conducted to collect information from licensed contractors that helps identify current trade practices. The results of the occupational analysis are then used to update the licensing examination. The Department of Consumer Affairs' Examination Validation Policy recommends that an occupational analysis be performed every five-to-seven years. The Board's goal is to perform an occupational analysis for each classification every five years.

During 2008 the Testing Division completed seven occupational analyses and updated 10 examinations. In 2008, the Examination Development Unit was fully staffed and scheduled to complete ten occupational analysis projects. Occupational analysis projects are typically initiated in January and July. Due to the delay in passing the state budget, most of the projects scheduled to begin in July were not initiated until October, therefore three projects were not completed by the December 2008 target date. It is expected that the delay may impact the projects scheduled for 2009. The Unit is currently evaluating additional information technology enhancements for recruiting Subject Matter Experts and conducting occupational analysis surveys that may shorten the time required for project completion.

### OCCUPATIONAL ANALYSES COMPLETED

C-5 Framing and Rough Carpentry  
C-10 Electrical  
C-13 Fencing  
C-28 Lock and Security Equipment  
C-35 Lathing and Plastering  
C-38 Refrigeration  
C-60 Welding

### NEW EXAMINATIONS COMPLETED

C-16 Fire Protection  
C-21 Building Moving and Demolition  
C-34 Pipeline  
C-38 Refrigeration  
C-42 Sanitation Systems  
C-45 Electrical Signs  
C-46 Solar  
C-55 Water Conditioning  
C-57 Well Drilling  
Hazardous Certification



## Test Centers

The Board administers examinations Monday through Friday at testing centers located in Sacramento, Oakland, San Jose, Fresno, Oxnard, Norwalk, San Bernardino and San Diego.

Beginning in 2005 the Board began a program to expand the capacity of the testing centers to meet the ever-increasing demand for examinations. The following table lists the approved expansion projects as well as the status of each project:

LOCATION	EXPANSION PROJECT DETAIL	STATUS
Sacramento	Increase capacity by 9 seats to 32 seats	Completed January 2006
Oxnard	Increase capacity by 12 seats to 33 seats	Completed August 2006
San Jose	Increase capacity by 18 seats to 25 seats	Completed November 2006
Norwalk	Increase capacity by 32 seats to 59 seats	Completed December 2007
San Bernardino	Increase capacity by 31 seats to 45 seats	Completed March 2008
San Diego	Relocate and increase capacity by 10 seats to 25 seats	Completion expected by 2010
Fresno	Relocate and increase capacity by 10 seats to 25 seats	Completion expected by 2010

## State Contractors Official Regulatory Exams (SCORE)

In 2007, CSLB began administering all examinations using SCORE, a new Microsoft Windows-based system developed in-house by Testing Division staff. SCORE was designed to replace the aging DOS-based testing system that was in use since 1990. The new system not only provides a more reliable, user-friendly system but provides the technology to automate reports, increase examination security and, in many cases, trouble shoot and fix hardware and software problems without the need for staff to travel to the affected site.

In 2008, Phase 2 of the SCORE project was completed, which replaced the DOS-based examination development and item banking software. The new i-bank is a database that maintains the test questions for all of CSLB's 45 examinations. The i-bank allows test development personnel to create examination versions and immediately send them to the Division's eight testing centers. Examination results are available in real time and statistical analyses are built into the system, allowing test development staff to perform

statistical analysis for each of their assigned examination programs in a matter of minutes. The old system for statistical analysis took several hours, required the use of three programs, and could only be completed by one trained staff person. The new system is user-friendly, reduces training time, and has increased efficiency for all examination development procedures.

In 2009, the Division will be working on modifications to the SCORE examination administration system, as well as the examination development system. After using the SCORE system for several months, additional modifications and enhancements have been identified that will streamline work processes and further improve the capability of the Testing Division to provide exceptional customer service and high quality examinations.

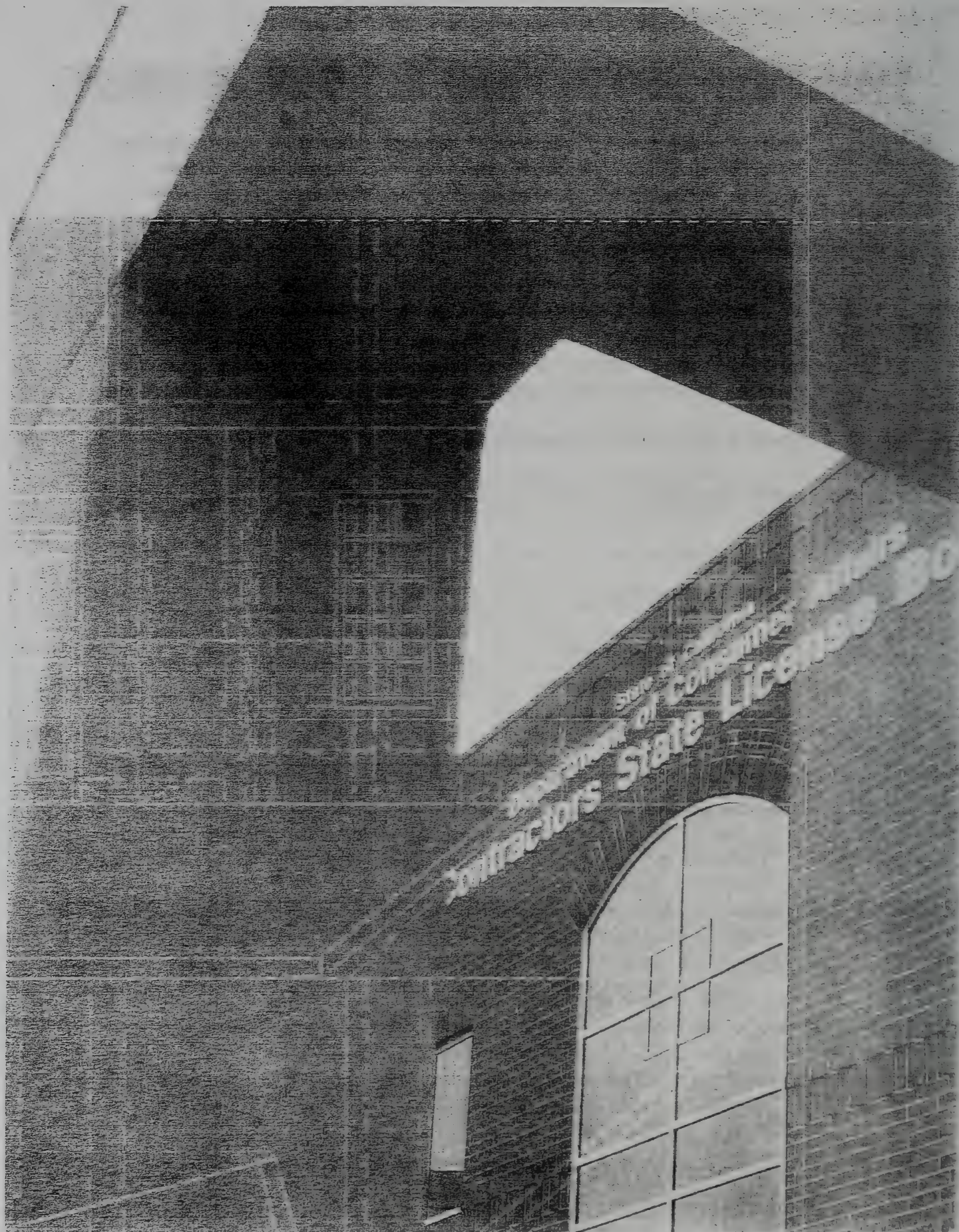
## 2008 Examination Statistics

EXAMINATION TYPES	TOTAL
Trade	42
Certification	2
Law and Business	1

Number of Examinations Scheduled	75970
Number of Misconduct Investigations	52
Number of Confirmed Misconduct Incidents	42
Overall Passing Percentage	46%









# Legislation

The bills listed below that were signed into law (chaptered) in 2008 by Governor Schwarzenegger will have an impact on CSLB operations. Where applicable, the chaptered bills were included in the CSLB Implementation Plan. The plan identifies the CSLB divisions that are impacted by the legislation and outlines the basic steps necessary to implement each bill.

## **Development and Coordination of Sponsored Legislation**

### **CSLB sponsored the following legislation during the last half of the 2007/2008**

**session:** AB 611, AB 2335 and SB 1432. AB 611 died in the legislature due to technical issues with the bill, but the remaining two bills were chaptered and became effective on January 1, 2009. A summary of the two chaptered bills is provided below:

#### **AB 2335 (Chapter 66, Statutes of 2008)**

Previously, the law pertaining to building permits was contained in numerous separate sections. AB 2335 repealed those separate provisions to create a consolidated provision of law. It combines and modifies the building permit application forms and, most notably, expands the acknowledgments property owners are required to make relative to the risks associated with hiring unlicensed contractors.

#### **SB 1432 (Chapter 157, Statutes of 2008)**

This bill amends the law regarding license bond claims. As a result of this bill, property owners contracting for the construction of a single-family dwelling will be given equal status with the owners of home improvement projects relative to claims resulting from a violation of Contractors License Law, if the dwelling is not intended or offered for sale at the time the damages were incurred.

SB 1432 amends the law to extend the time limit during which a claim can be filed against the bond of a licensee whose license has been cancelled, revoked or inactivated. It also conforms this filing period to the filing period that is applicable for active licenses: within 2 years of the date the license would have expired had the license not been inactivated, canceled, or revoked.

This bill also increased the jurisdiction of the small claims court for any action brought by a natural person (consumer) against a defendant guarantor that charges a fee for its guarantor or surety services (contractor's license bond) from \$4,000 to \$6,500.

## **Other Legislation Impacting CSLB Operations**

All bills introduced by the legislature must be screened to determine whether they will have a relevant impact on the board, consumers, or the construction industry. For example, in its final form, SB 1362 (listed below) contains amendments that were contributed through negotiations between the CSLB Legislative Division, the author's office and the sponsor of the bill. The following chaptered legislation, although not sponsored by CSLB, directly impacts or involves the agency.

### **SB 797 (Chapter 33, Statutes of 2008)**

This bill includes a provision requiring more severe penalties against individuals contracting without a license if they were named on a license that was revoked, and were held to be responsible for the acts resulting in the revocation.

### **SB 963 (Chapter 385, Statutes of 2008)**

The sunset date for the CSLB and the Registrar was extended from January 1, 2010, to January 1, 2011 by this bill. The bill required considerable effort by staff and the Chair of the CSLB Legislative Committee, without which the Board and the Registrar's position would quite possibly have become inoperative on July 1, 2009.

### **SB 1362 (Chapter 716, Statutes of 2008)**

This statute created violations applicable to the certification requirements for journeyman electricians. It requires the Chief of the Division of Apprenticeship Standards to refer specified cases against electrical contractors to the Contractors State License Board for investigation and disciplinary action effective July 1, 2009. The new law also requires development of a memorandum of understanding for the handling of cases no later than July 1, 2009.

## **Bill Tracking**

Over 25 bills were identified and tracked during the 2007-2008 legislative session. Although some of the bills would not have directly impacted CSLB, they were tracked in order to keep the construction industry adequately informed regarding bills likely to impact their businesses. Ultimately, the CSLB Legislative Division worked directly with the authors' offices on the following bills that either did not survive the legislative process, or were amended to change the subject matter covered by the bill:

AB 1925 (Eng), AB 2224 (De La Torre), AB 2288 (Torrico), AB 2326 (Lieu), AB 2412 (Eng), AB 2479 (Hancock), SB 355 (Margett), SB 538, SB 569 (Steinberg), SB 1581 (Aanestad), SB 1698 (Romero).



# Public Affairs

## Media Outreach

During 2008, CSLB's Public Affairs Office (PAO):

- Distributed 32 press releases
- Distributed 11 industry bulletins
- Organized five media events and participated in three additional media events
- Fielded more than 365 media inquiries and requests for interviews

## Media Events

PAO continued to work closely with the Enforcement division to issue consumer alerts, publicize high-profile cases and highlight undercover enforcement operations. In 2008, PAO took part in eight media events. All events earned widespread media attention and coverage.

## Press Events

- The first press event was conducted on March 14, 2008, in American Canyon (Napa County) to announce the results of a series of undercover sting operations. The operations, dubbed "California Blitz," were conducted by CSLB's Statewide Investigative Fraud Team (SWIFT) in seven different cities over a two-day period. A total of 175 people were arrested.
- On May 1, 2008, the PAO held a press event in Palm Springs to announce the results of a two-day undercover sting operation.
- On August 12, 2008, PAO publicized a sting operation targeting a revoked painting contractor who continued to victimize unsuspecting consumers by passing himself

PAO continued to work closely with the Enforcement Division to issue consumer alerts.





## ACCOMPLISHMENTS AND ACTIVITIES REPORT

- off as a partner with another licensed contractor. Four media outlets accompanied CSLB as the suspect was arrested when he arrived at a victim's house.
- On October 31, 2008, PAO coordinated a multi-agency media event in Los Angeles to announce the results of a two-day undercover sting operation. In addition to CSLB's Statewide Investigative Fraud Team, participating agencies included the Plumbing-Heating-Cooling Contractors Association, Department of Toxic Substances and the Los Angeles City Attorney's Office.
  - On December 11, 2008, PAO held a press event to announce the results of an undercover sting operation at two homes in Sylmar (Los Angeles County). The stings were conducted at homes damaged by wildfires that roared through the area four weeks earlier. Suspects were singled out because of business cards and flyers left in the fire zone, newspaper ads, and for potentially being repeat offenders. One of those arrested at the sting was an 82-year-old man who had a long history with CSLB for his work as a phony contractor, including more than one dozen criminal cases and a current open complaint.

### Other Events

- On June 18, 2008, PAO coordinated press coverage of the arrest of an unlicensed contractor who abandoned a remodeling project he had begun for the family of a soldier stationed in Iraq after reportedly taking about \$85,000. The suspect was charged and later convicted of felony charges.
- From the spring through fall 2008, PAO conducted extensive media outreach regarding a statewide paving scam. The leader of a transient band of unlicensed asphalt pavers faced felony and misdemeanor charges, as well as a civil lawsuit. The suspect then moved onto Idaho. PAO conducted interviews with Idaho media after his arrest in that state. The suspect then moved onto Washington and PAO worked with Seattle media to coordinate coverage there.
- On May 20, 2008, the PAO responded to multiple interview requests after issuing a press release about the arrest of a couple who were responsible for day-to-day operations of Aquarius Pools (License #267176), located in Sacramento. The arrests came after an investigation by CSLB and the Sacramento County District Attorney's Office. The two faced 11 felony charges for mishandling company finances, defrauding consumers and subcontractors, and willfully filing false income tax returns. Aquarius Pools abruptly halted operations in August 2006, leaving more than 60 homes with partially completed swimming pools.

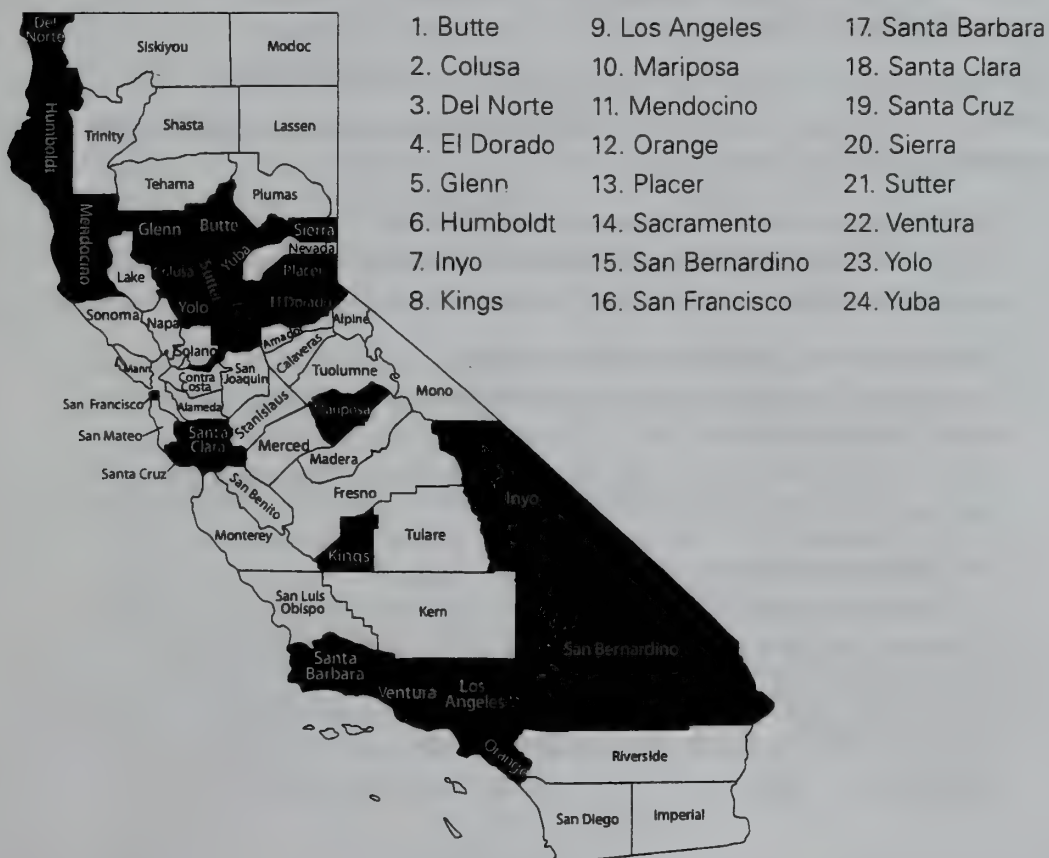
## Disaster Response

PAO continued to spearhead an aggressive program to respond to natural disasters by quickly arriving at disaster assistance centers with educational materials that helped to inform victims about the potential for being solicited by unlicensed or unscrupulous contractors.

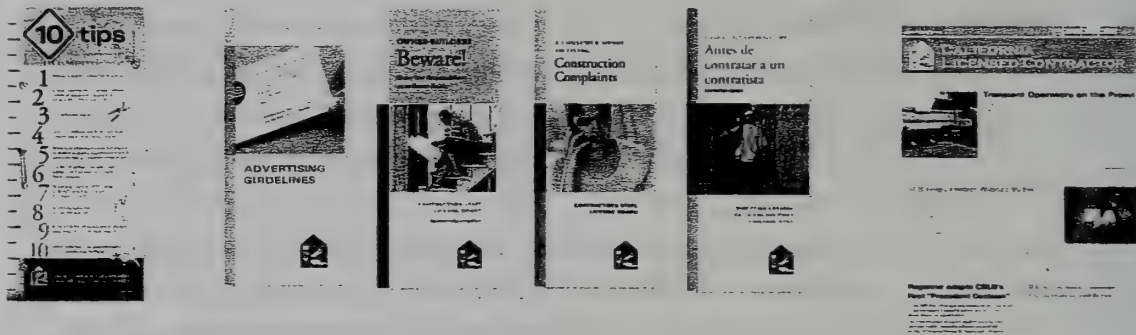
PAO and Enforcement distributed thousands of educational brochures and placed hundreds of warning signs in disaster areas around the state. One side of the yard sign warns consumers that they might be solicited by unlicensed or unscrupulous contractors; the other side warns unlicensed contractors that they could face felony charges if caught contracting without a license in a state-declared disaster area. Electronic versions of the signs were distributed to chambers of commerce with a request to have members print them out and post them in their businesses.

During 2008, Governor Arnold Schwarzenegger declared a state of emergency in 24 of the state's 58 counties. In some cases, counties received a declaration more than once, due to different disasters.

Counties where a state of emergency was declared during 2008 are indicated in red.



## ACCOMPLISHMENTS AND ACTIVITIES REPORT



### Collateral Materials

The following publications were either created or updated during 2008:

- **2008 California Contractors License Law & Reference Book**

The 700-page reference describes the legal requirements affecting contractors and contains a complete list of all laws and regulations in effect January 1, 2008. Almost 5,000 copies of the book and CD-ROM were sold through an independent company, LexisNexis. An additional 1,200 copies were given to the board for distribution to staff, libraries, legal offices, and other interested parties as part of a "no cost" contract.

PAO staff spent substantial time during the final two months of 2008 conducting a major update to the publication, as well as identifying language problems in regulations in preparation for clean-up legislation.

- **California Licensed Contractor Newsletter**

One issue of the newsletter was produced in 2008. The Summer 2008 industry-specific newsletter was mailed to all licensees in the CSLB's Interested Parties list.

- **CSLB Matters - Employee Newsletter**

Five issues of the internal employee newsletter were distributed to all staff via e-mail, and were posted to the CSLB Intranet site. The newsletter highlighted important employee news, along with various employee activities and other features.

- **2007 Accomplishments & Activities Report**

This report highlighted important activities conducted by the Board during 2007. The booklet was distributed to the Board at its February 2008 meeting.

- **2008 CSLB Strategic Plan**

This booklet outlined the Board's priorities, mission, vision, values, goals, and framework for the activities the Board planned to perform during 2008-2009.



An updated booklet was distributed after the Board's strategic planning session in April 2008.

- **Board Administrative Procedure Manual**

This guidebook details the main rules and procedures concerning Board members. It is updated on an annual basis.

- **Consumer Guide to Filing a Small Claims Court Construction Complaint Claim**

This brochure gives consumers basic information about filing a small claims court case.

- **Advertising Guide for Contractors**

Contractors can learn the basics about what California law requires for construction advertisements in this brochure.

- **10 Tip Cards**

These cards provide consumers with a quick list of guidelines when hiring a contractor. One side lists the tips in English; the other side in Spanish.

- **A Homeowner's Guide to Preventing Mechanic's Liens**

This brochure describes what a homeowner needs to know in order to prevent a mechanic's lien against their property.

- **Tips for Hiring a Roofing Contractor**

Consumers can get information on roof maintenance and hiring and dealing with roofing contractors in this brochure.

- **What Seniors Should Know Before Hiring a Contractor**

This brochure gives seniors information on hiring and dealing with contractors.

- **What You Should Know Before Hiring a Contractor (Spanish)**

Information on hiring and dealing with contractors is presented in Spanish in this brochure.

- **A Consumer Guide to Filing Construction Complaints**

This brochure features consumer information on how to file complaints about a construction project.

- **After a Disaster Don't Get Scammed**

This brochure is used to educate disaster victims on how to protect themselves as they try to repair or rebuild their house.

## ACCOMPLISHMENTS AND ACTIVITIES REPORT

- **Owner-Builders Beware**

This brochure outlines responsibilities that homeowners can encounter if they pull their own building permits.

- **CSLB Construction Protection (DVD)**

This 12-minute video is an overview of CSLB and includes some basic consumer tips.

- **CSLB Disaster Warning (Signs)**

These signs are posted in disaster areas to warn victims that unlicensed or unscrupulous contractors may try to scam them. They also warn unlicensed contractors that they could face felony charges if caught contracting without a license in a disaster area.

### Most Wanted Web Site Feature

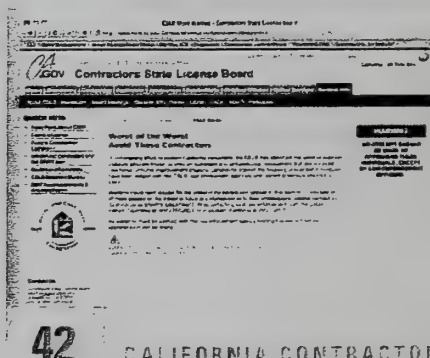
On January 30, 2008, a new "CSLB's Most Wanted" feature was launched on the CSLB Web site. This feature includes a list of the most egregious unlicensed operators in the state, all of whom have open arrest warrants. A total of seven suspects on the list were arrested during 2008.

### Advertising/Public Relations Contract

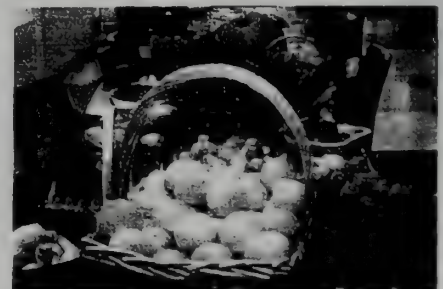
In February 2008, a contract for advertising and public relations services was awarded to the ASTONE/Crocker/Flanagan agency of Sacramento. The contract was signed in late June, lasts for one-year, and has two one-year extensions. The contract was suspended for a time due to Executive Order S-09-08 and a delay in passing a state budget for fiscal year 2008-09.

### Employee Wellness

In 2008, the PAO took the lead in providing a number of different offerings to employees at CSLB Headquarters to promote employee wellness. One of the most popular activities was a monthly Farmers Market. Ongoing since February 2007, employees



ASTONE



are encouraged to donate fruits or vegetables they grow or purchase. In exchange, they are allowed to pick from a supply of fruit and vegetables supplied by fellow employees.

Other Employee Wellness offerings include:

- Low-cost chair massages
- Various seminars, with topics including savings, caregiver and health topics
- Lunchtime workout and other exercise opportunities

Any employee costs for these programs are paid for by employees.

### **John C. Hall Hearing Room**

On September 20, 2008, the hearing room at CSLB Headquarters was formally named in honor of Board Member John C. Hall. Mr. Hall served on the Board from 2000 through his death in February 2006. He was elected Board Secretary in 2004 and Vice Chair in 2005. He also served as Chair of both the Legislative Committee and Enforcement Committee.

### **Senior Scam Stopper Seminars, Speakers Bureau, Community Events, Industry Shows, Home & Garden Shows**

The Board participated in more than 50 outreach events, speaking engagements, and industry and consumer shows during 2008. In addition, PAO staff worked with legislators and community-based organizations to coordinate 24 Senior Scam Stopper (SSS) events around the state. The following is a partial list of those events:

#### **January**

SSS in San Pedro  
SSS in Signal Hill

#### **February**

SSS in Reseda  
SSS in Los Angeles

#### **March**

SSS in Azusa  
SSS in Redlands  
SSS in Perris

#### **April**

SSS in Lake Elsinore  
SSS in Belmont  
SSS in Palm Desert  
SSS in Daly City

#### **May**

SSS in Huntington Beach  
SSS in El Sereno  
SSS in Long Beach  
SSS in Redondo Beach



## ACCOMPLISHMENTS AND ACTIVITIES REPORT



### June

Plumbing-Heating-Cooling Contractors  
Association Convention in Long Beach  
California Landscape Contractors  
Association in Anaheim  
SSS in Rosemead  
Fresno Home Show  
SSS in West Covina  
SSS in Cerritos

### July

Yolo Fraud Fair in Woodland  
SSS in Fairfield

### August

National Association of the  
Remodeling Industry Show

### September

Assembly Member Mary Salas  
Small Business Forum in San Diego

### October

Senior Expo in Petaluma  
Congress Member Grace Napolitano  
Town Hall in Basset Park  
SSS in Yucca Valley  
SSS in La Puente  
SSS in Garden Grove

### November

SSS in Sacramento  
Professionals Achieving Consumer  
Trust Summit in Los Angeles

### December

SSS in San Mateo

## Recognition

On May 8, 2008, PAO staff received a "Gold Award" from the State Information Officers Council for best Brand Identity Package. The award was for CSLB's new graphics style and how these elements are spread throughout CSLB's brochures, reports, display banners, promotional items and in the major overhaul of the CSLB Web site.

The look and feel is an effective mix consisting of a soft palette of subdued industrial colors, modern graphics and clean lines reflecting the mission of the agency that is responsible for licensing construction, one of California's largest industries. It provides a solid professional image for CSLB and, for the casual viewer, information pieces they will be more likely to pickup and read.





# Organizational Development

## ADMINISTRATION DIVISION

### Budget

The FY 2008/09 CSLB budget includes 434.6 total positions (432.0 permanent and 2.6 blanket positions) and a total payroll appropriation of \$60,061,182. The position count includes the following augmentations:

- 7.0 new permanent positions to establish and staff a Central Valley Region SWIFT Center
- Two-year reauthorization of 11.0 Economic and Employment Enforcement Coalition (EEEC) positions that were scheduled to expire on July 1, 2008

The appropriation amount includes support funding for the 7.0 new positions and 11.0 continuing positions, increases for employee compensation (\$1,493,962), adjustments for changes in employer retirement contributions (-\$121,813), a 2.4 percent augmentation for operating expense and equipment price increases (\$594,000) and other miscellaneous increases and adjustments.

### PERSONNEL

In 2008, CSLB made 128 permanent appointments:

- 47 promotions
- 34 internal transfers
- 26 interdepartmental transfers
- 16 new hires
- 5 reinstatements

The FY 2008/09 CSLB budget includes 434.6 total positions.



## ACCOMPLISHMENTS AND ACTIVITIES REPORT

There was also one limited-term appointment and 40 temporary/seasonal hires.

Promotional exams were conducted for:

- Associate Personnel Analyst
- Business Service Assistant
- Enforcement Representative I (Open Non-promotional Statewide Continuous basis)
- Executive Assistant
- Office Services Supervisor II & III
- Personnel Selection Consultant I & II
- Test Validation & Development Specialist II

Examinations are underway for:

- Associate Governmental Program Analyst (Promotional - merged Biannual)
- Enforcement Representative II (Promotional)
- Enforcement Supervisor I & II
- Management Services Technician
- Office Services Supervisor I (G & T)
- Staff Services Manager I, II & III (series)

### **Personnel Delegation of Duties**

DCA has delegated authority to CSLB for certain personnel management functions. The delegation is on a trial basis effective July 1, 2008 through June 30, 2009. DCA will evaluate the effectiveness of the pilot program after one year before approving full delegation. This has and will allow CSLB Personnel to provide more efficient and timely customer service to its employees and Board members.

The authorization enables CSLB to work directly with the State Controller's Office, State Personnel Board, CalPERS, and DCA, and grants CSLB access to all relevant systems, including access to HRIS, ACES and the online examination and certification systems. This improves time and accuracy when processing critical transactions.

The CSLB Personnel office is currently working with several different entities, including CSLB Information Technology, the State Personnel Board, and the State Controller's Office, to access material and equipment that will enable Personnel staff to perform the delegated functions.



## 2008 BUSINESS SERVICES UNIT

### Space Projects

Several workspace use and design projects were completed or started in 2008.

Completed projects include:

- **Azusa Investigation Center** – office moved from West Covina to Azusa
- **Monterey Office** – renewed lease for 4 more years
- **Norwalk Investigation Center** – remodeled space for 2 new hearing rooms
- **San Bernardino Office** - Renewed lease for the Investigation Center (office was painted and new carpet installed), Testing Center was moved to a larger space (expanded to 47 testing stations)

### New Projects

- Relocate the Fresno Investigation and Testing Centers (completed site search and new location chosen). The new location includes space for a new Central SWIFT Unit.
- Relocate the Oxnard Investigation and Testing Centers (completed site search and new locations chosen). The Testing Center will remain in Oxnard. The Investigation Center will be located in Valencia.



CSLB Investigation Center, Valencia

### Contracts

More than 25 contract requests were process in 2008. Major contracts included Benjamin Frank LLC (Consultant/Program Evaluation Services); Moore, Iacofano, Goltsman LLC (Consultant/ Strategic Planning Services); Shaw Valenza LLP (Consultant/ Sexual Harassment Prevention Training—Licensing Division); and ASTONE/Crocker/ Flanagan (Consultant/Public Awareness Contract).

Also processed by the Business Services Unit were hundreds of training requests, travel claims and advances, and purchase order requests.

## INFORMATION TECHNOLOGY

### Licensing and Enforcement System

The Programming Unit completed over 300 modifications/enhancements to the automated Licensing and Enforcement System. The majority of these modifications/enhancements are requested from the business users and range from adding new transaction codes to the automated system, to major printing enhancements. These changes can involve modifications to the custom software and/or hardware that interface with the system.

### Telecommunications

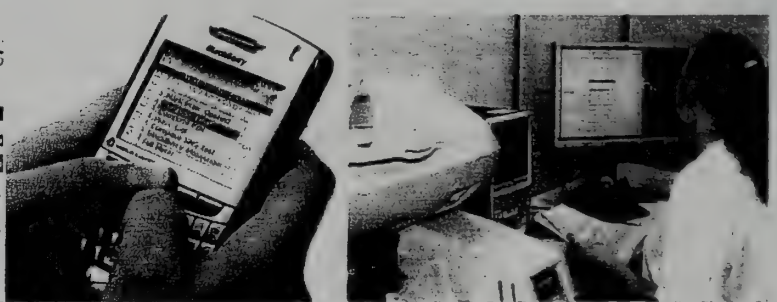
CSLB upgraded cellular phones and rolled out BlackBerry devices. The BlackBerry functionality includes e-mail, broadband access (wireless access to CSLB's network from laptops) and, for some staff, Global Positioning System (GPS) access. An added feature of the BlackBerry is that e-mail is not dependent upon our e-mail server availability. Should the CSLB server malfunction, staff will still be able to use e-mail via their BlackBerries.

### CSLB's Web Site

In October 2008, CSLB completed converting its Web site to the Governor's office new look and feel that uses a horizontal format with tabs and specific color palettes. Additionally, major improvements were made to the online complaint form.

### Image Workflow Automation System (IWAS)

Major improvements were made to the IWAS management/workflow monitoring reports. IWAS now generates eight different reports based on volume, point in time, cycle time, and document type. The supervisors/managers can generate these reports directly from IWAS.



## **iLicensing—Online Licensing Services**

The iLicensing project is managed by the Department of Consumer Affairs, Office of Information Systems. The iLicensing system will provide online (Internet) services for the electronic filing of original applications, renewal applications, address changes and online payment of fees for all of DCA's licensees and applicants.



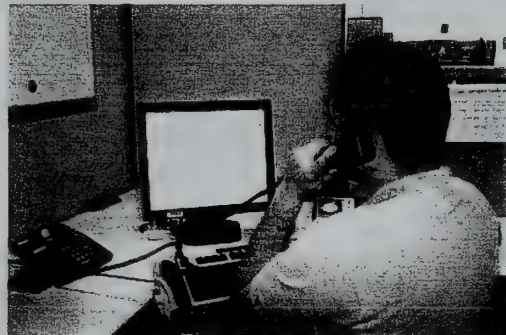
The project is currently in the Request for Proposal phase. This is where various vendors bid on the project; final proposals/bids are due in February 2009. It is anticipated that the contract will be awarded in November 2009.

The iLicensing system has developed a name for the on-line system—breZE.

DCA met with CSLB in December 2008 to begin the process of identifying business requirements.

## **CSLB's IT Help Desk**

The CSLB IT Help Desk processed more than 7,300 tickets in 2008. These tickets are opened by CSLB technology users who have problems with their computers, printers, phones, access to various systems, adding or changing employee access levels, forgotten passwords, etc.





ACCOMPLISHMENTS AND ACTIVITIES REPORT

**NOTES:**

**CONTRACTORS STATE LICENSE BOARD**

9821 Business Park Drive, Sacramento, CA 95827

800.321.CSLB (2752)

[www.cslb.ca.gov](http://www.cslb.ca.gov)









Louise Kirkbride

# Louise Kirkbride Responses

Senator Darrell Steinberg  
Chairman  
Senate Rules Committee  
State Capitol  
Sacramento, CA 95814

## Senate Rules Committee

MAR 11 2009

## Appointments

Dear Senator Steinberg:

Thank you for the opportunity to respond to your questions about my previous service on the Contractors' State License Board, and about my goals for the future. I have formatted the following to be as efficient as possible by repeating the specific questions that you asked, followed by my answer.

1. *What efforts have you made to advance your previously stated goals? Do you believe you have met your goals?*
  - a. *When I joined the board, the phone lines were not opened in the afternoon. They were only opened during 'contractor' hours. They are now open during normal business hours. Also, at that time, there was minimal, if any, reporting done about the level of service provided on the phones. There is now a good reporting tool in place and the average call times and other data regarding phone center performance is presented at every board meeting. From personal experience, I can attest that when I joined the board it was not uncommon to have phone calls simply disconnected. That doesn't happen anymore, to my knowledge.*
  - b. *I spent a great deal of time analyzing how operational performance numbers that were included in board packages were generated. I found that there were significant inconsistencies. The board has made many changes in how the numbers used to measure performance are generated and presented, and I now have confidence that they are consistent and reliable.*
  - c. *When I started on the board, there was no Communications Committee. I asked that the committee be formed, and that I serve as its first chair. I believe that the increased attention to the subject has helped encourage staff to be more creative in thinking about using outreach techniques – like focus groups – that are common in industry. If the plans for the redesigned website can be realized, I believe it will be a model for other agencies to copy.*
  - d. *During my tenure on the board, I believe I have helped to encourage a change in how technology is used, and how it is viewed. I believe that the staff is placing greater emphasis on viewing technology as a means to greater efficiency -- and a good thing – rather than a necessary evil and unreliable burden.*
  - e. *Shortly after joining the board, I received a blizzard of letters alleging misdeeds of many sorts by the CSLB staff and management. Other board members received some, as did the then-current management of DCA. I proposed handling the letters in a formal way by creating an ad hoc committee to interview several staff and management personnel. That committee found no provable basis for any of*

*the allegations, but did find some weaknesses in the organization. We generated a letter to management which proposed some changes to the organization and its operations, and those proposals were adopted.*

2. *What are your current goals and objectives as a member of CSLB? Are they different from your original goals as an appointee? What do you hope to accomplish during your next term? How will you measure your success?*
  - a. *After being appointed to the Accountancy Board, several other CSLB board members asked me to consider applying to serve on both boards. The expressed their beliefs that my strong technology background would be missed as the board has undertaken several technology oriented projects I hope to help the board complete those projects successfully so that its operations can be more efficient going forward.*
  - b. *Also, I have become concerned over the past couple of years that the board is not providing any protection to some part of the public that is likely at most need of some protection. The law states that an unlicensed worker cannot contract for any job over \$500. In today's economic environment, it is possible that one could find contractors to take on such jobs, but that situation is not the norm. Usually, the elderly, the poor, those on limited fixed incomes who need small jobs done are forced to deal with unlicensed workers. I believe that one of the biggest sources of consumer protection we provide is fingerprinting of licensees. We know that just because someone holds a valid license does not imply he will do good work, nor does it guarantee that he is not a crook. However, it does mean he does not have a violent criminal record. I would like to see CSLB license handymen and the staff has analyzed the feasibility of doing so, and the position of other states in this regard. That analysis has been presented to the licensing committee. I would like to give the people of California the ability to choose a handyman who at least does not put their personal safety at risk when let into the home.*
  - c. *As part of their effort to improve customer interaction, the staff is looking at ways to enable email interaction with consumers -- a facility that was abandoned long ago. Also, they are making major strides to allow licensing on-line. Finally, I hope to see a 'Find a Contactor' function added to the web site. I believe this will give the public a reason to visit the CSLB website.*
3. *What have been your most significant accomplishments as a member of CSLB?*
  - a. *Please see the answer to question 1, above.*
4. *Do you believe there is a sufficient supply of qualified contractors to perform the work outlined in the federal stimulus bill?*
  - a. *I don't know enough of the details of the stimulus package to know how many contractors will be needed. However, the problem that most contractors face right now is too little work, not too much. I think there will be plenty of contractors available.*
5. *Given the staff cuts and the large scale construction projects in the stimulus bill, how will the board ensure it is able to meet the needs of the construction industry in a timely and efficient manner?*
  - a. *The number of applications for licenses has fallen off pretty dramatically. I am quite confident that if the number increased to its previous level, or even a somewhat higher number, the board staff has the capacity to process all applications in a timely way.*



Senator Darrell Steinberg  
March 9, 2009  
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Louise Kirkbride

6. *How does the board prioritize its responsibilities, particularly given current budgetary realities?*
  - a. *The Board has always focused on enforcement, licensing efficiency and outreach. Because of the fall-off in the construction business overall, I don't believe the public has detected any material change in the Board's operations due to the budgetary crisis.*
7. *What has the board undertaken to address the long-term trend of declining workforce, as outlined in the strategic plan? Has the board made any effort to encourage high school students to consider jobs in the construction industry?*
  - a. *The Board has appointed a member of staff to lead efforts for internal organizational development and I think that person is thinking in very creative ways about how to do business in the future. I have had several conversations with this individual about how industry is continually planning for a new workforce by finding as many places in the organization where automation can eliminate repetitive jobs, and by embracing the technology awareness that younger people have.*
  - b. *As for encouraging the young people to enter the construction industry, some individual board members who are members of other professional organizations are making significant efforts to do just that. I believe that the CSLB itself has no business encouraging or discouraging young people in their consideration of various lines of work. When there is a lot of construction work, wages will go up and people will join the industry.*
8. *Please explain your position on retroactive criminal background checks of CSLB licensees.*
  - a. *I agree strongly with the proposition that we should do criminal background checks on existing licensees. Problematic points in this policy have been pointed out by other board members, namely that i.) the program purports to fingerprint contractors, but not all of their employees, ii.) existing contractors with no criminal history could temporarily lose their licenses [and therefore not be paid] due to delays in processing, and iii.) the possibility that someone with a distant criminal past and a subsequent clean record could be prevented from pursuing his occupation. I agree that these issues need to be carefully thought through; however, the situation we are in now, where individuals with histories of violent sexual crimes could be invited into someone's home – bearing the stamp of approval of the State of California – seems indefensible to me. I believe I am in the minority of the Board members on this issue.*
9. *Do you believe that the board's existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a contractor? Are there changes you would recommend? If so, please elaborate.*
  - a. *I think that the board could do more to help consumers find a good contractor. I have suggested a "Find a Contractor" feature on the CSLB website. I also think the data records could be cleaned up to make them more understandable to the public. Also, I would like to see the board move towards full disclosure to the public regarding the contractors' histories.*
10. *How does the board ensure that members of the public – including those with limited English proficiency – can participate in or access information about its activities?*
  - a. *Our documentation is routinely translated into Spanish, and often into a couple other languages. The staff either has or is in the process of bringing on Spanish*



Senator Darrell Steinberg  
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*speakers to the help line. The Board recently conducted focus group meetings to evaluate the quality of its outreach, and half of those were conducted in Spanish. The Senior Scam stopper programs are often held in Spanish-speaking neighborhoods.*

11. *CSLB posts meeting agendas and minutes on its Web site; meeting materials may be separately obtained upon request. Other boards, such as..., post their meeting materials on their websites, in addition to agendas and minutes. Has the board considered posting its meeting materials online?*
  - a. *I don't think this has come up, but I'm all for it.*
12. *How has the board used the internet and other technology to increase public participation and improve services to its licensees?*
  - a. *I would like to see the state invest in setting up technology centers so that the public could attend a board or committee meeting at a location near their homes. There is a major overhaul of the CSLB website underway. Much has been done, more could be done. The folks at CSLB have done some very creative things like contacting Craigs list to help alert the public to the dangers of using unlicensed contractors. We also tried buying some keywords on Google, with mixed results.*
13. *Is CSLB facing the same staffing shortages caused by retirements that are affecting other departments? If so, what steps are you taking to ensure you have a qualified workforce in the future?*
  - a. *See answer to question 7, above.*
14. *Please outline the type of training CSLB provides its employees on a regular basis.*
  - a. *I really don't know the answer. But one thing that the board does that is an excellent staff talent builder is to have informational presentations at some of the meetings by various staff members on topics of interest. These presentations do not require action by the board, but are a great way of bringing new board members up to speed – and they are great confidence builders for staffers.*
15. *What challenges and/or opportunities have you experienced as a member of two state regulatory boards?*
  - a. *The only challenges for me have been scheduling issues. For opportunities, please see the answer to question 16, below.*
16. *How do the two boards benefit from your dual membership?*
  - a. *I am sure the folks at CBA are tired of hearing me say how things are done at CSLB. Whether or not they consider that a benefit, I can't say. However, there have been significant changes in how the CBA operates over the past year, largely due to the fact that we have a new EO who has embraced several [but not all – good for her] of the suggestions that I made. Also, I suggested that The Registrar at CSLB reach out to our new EO and meet with her a couple of times to give her a little counseling. He graciously agreed to do that and I think our new EO was grateful for the support.*
  - b. *However, I am convinced that there is much more that could be done across all of the boards and bureaus under the DCA umbrella to normalize operations, set some operational standards, and increase efficiency. I'm not sure the motive force to drive such an initiative will come from within, but I am convinced that at least a 10% increase in effectiveness, with no increase in staff or budget is possible, just by defining and adopting best practices across all of the DCA organizations.*

Senator Darrell Steinberg  
March 9, 2009  
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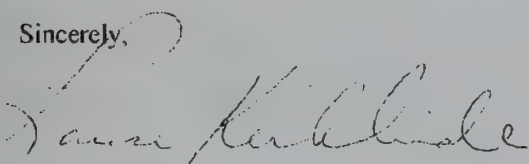
Louise Kirkbride

As you may remember from my original application, my background is in management of high-tech venture capital based enterprises. My particular strengths are in managing corporate change and in running a business on a very tight budget. I believe that the following are strengths that I bring to the board most effectively.

- Experience with developing and managing in a high tech environment,
- Board level experience at public and private institutions, beyond the state boards, and
- Success in strategic planning initiatives in changing environments.

I hope the above has adequately answered your questions. I have enclosed with this letter a copy of my most recent Form 700. I look forward to continue my service on the Contractors' State License Board.

Sincerely,



Louise Kirkbride







Gregory M. Finch

Direct: (916) 856-5800

April 9, 2009

Senator Darrell Steinberg  
c/o Nettie Sabelhaus  
Rules Committee Appointments Director  
Room 420, State Capitol  
Sacramento, CA 95814

*Gregory Finch  
Responses*

RE: Appointment to the Court Reports Board

Dear President Pro Tempore Steinberg:

I was surprised and pleased by the questions you had for me as part of the confirmation of my reappointment to the Court Reporters Board, surprised by the number and depth of the questions and pleased that the Senate is taking such an interest in our Board. We welcome your review and believe it is a service to California consumers to have legislative interaction with consumer boards.

The responses that follow may seem long, but it is my understanding they will be considered in lieu of live testimony at the hearing. If I were attending, these are the things I would like the Rules Committee to know about me and the Court Reporters Board.

1. *Has the Board been successful in meeting its numerous objectives in the past two years? If any objective was not attained, is there a reason?*

Thanks to having a fully-appointed Board and a hard-working staff, the CRB successfully met the ambitious objectives set forth in the 2007-2008 strategic plan. Being a small Board, all members were called upon to take an active role. Our dedicated Board members took on chairing the various task forces and committees and were conscientious in obtaining results. As with any strategic plan, ours was a living document. Some of the objectives were either subsumed into other projects as a result of new information or became obsolete after additional review and investigation.

2. *The latest Strategic Plan posted online is the Board's 2007-2008 Strategic Plan. Was there a 2008-2009 Strategic Plan? Is one being prepared for 2009-2010?*

A Board member position became vacant at the end of 2007. We delayed the scheduling of our strategic planning session in 2008 in hopes that the Governor's Office would appoint a licensee member to fill the vacancy. When it became apparent that larger issues were taking their time and attention, we decided to move forward with a new plan. The result was that at our last meeting on March 13, 2009, the Board adopted a new strategic plan for the years 2009-2011.

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**Senate Rules Committee**

APR 14 2009

**Appointments**

3. *What new goals and objectives do you have as the Chair of the Board for next year and for your term of office? How should we measure your success?*

Attached is a copy of the CRB's 2009-2011 strategic plan. I personally am onboard with all of the listed objectives. My belief is that in working to attain each of the objectives, we should include education and outreach as essential components. When anyone outside of the legal field hears the term "court reporter," the response is typically along the lines of, "Oh, yeah, the typists in court with the little machines." The actual role of the court reporter is much broader than the actual recording of testimony, and that disconnect is making it difficult for the CRB to fully accomplish its mandate to protect the consumer. I would encourage you to measure my success by seeing how well we meet the objectives of our 2009-2011 strategic plan.

4. *Could you or the Executive Officer of the Board provide us with a detailed summary of the types of complaints brought against court reporters, the number of complaints in each type category, the disposition of those complaints, the average time from complaint to disposition, whether the consumer complainant was satisfied with the disposition of the complaint, and whether there exists any backlog of unresolved complaints? If there is a backlog, what is the reason for the backlog and the estimated time to clear the backlog?*

The CRB is proud of its enforcement statistics. We enjoy the benefits of working with licensees who are very aware of our legal system and the consequences of not following the law. Our enforcement staff is able to informally resolve and mediate the majority of complaints. Our emphasis on licensee education also pays off with a high level of compliance. Enforcement staff commonly receive calls from reporters and/or attorneys in the middle of a deposition proceeding asking for clarification and direction.

The Executive Officer provided the following statistics about complaints for fiscal year 2007/2008:

Unprofessional Conduct (61 complaints)

- Notification from the Court of Appeal regarding Order to Show Cause (OSC) hearing scheduled for delinquent appeal transcript. OSC hearing notices are usually discharged because the CSR has filed the transcript before the hearing date. However, on occasion, the hearing is held and a fine is issued by the Court. The Board has issued Citation and Fines due to the action of the Court.
- Failure to produce transcripts in a timely manner or nonproduction of transcripts. In these cases, sometimes the CSR is unaware that the job is needed and produces the transcript immediately. Sometimes it is a lack of communication between the agency and the CSR and the transcript is produced once the CSR receives a letter from the Board. Other times the CSR has no reason for the delay and a Citation and Fine is issued with an Order of Abatement giving the CSR a date to produce and deliver the transcript or receive an additional monetary penalty. The Board has placed CSRs on probation for multiple instances where the CSR has not produced transcripts. During probation, the CSR is required to provide the Board with quarterly reports including a list of all jobs reported, the date the transcript was due and the delivery date. This report is signed by either the agency the CSR took the job through or the court in which the reporter works. On occasion the Board may be able to mediate a complaint by calling the CSR or their supervisor if they work in court.

- CSR violates Code of Civil Procedure – Examples of these types of violations under unprofessional conduct are: not notifying opposing counsel of an order of partial transcript or a rough draft by a party (One CSR was placed on probation for three years for this violation); CSR did not provide the deponent an opportunity to review the transcript; CSR provided a declaration regarding the activities of the deponent outside the deposition proceeding.
- Possible violations of CA Code of Regulations section 2475(b)(8) – gift over \$100

#### Negligence/Incompetence (2 complaints)

- Violations of CA Code of Regulations section 2473 – Citation and Fine is generally issued.

#### Product/Service Quality (19 complaints)

- Note reviews – a complaint is received regarding the validity of the testimony written down by the CSR during a deposition or, in most instances, a court proceeding. The complaint indicates on the transcript what the errors are, such as deleted testimony, added testimony, wrong speaker, etc. The notes are requested by the Board from the CSR and sent to a consultant for comparison.

#### Contractual (7 complaints)

- Fee disputes – Examples: Litigant deposited funds for a transcript, transcript was not produced and is no longer needed, CSR has not refunded monies; CSR overcharged for transcript in a court proceeding in violation of Government Code section 69950; CSR did not refund remaining balance of deposit for a transcript. In these situations the CSR refunds the money immediately upon hearing from the Board or a Citation and Fine is issued with an Order of Abatement requiring the CSR to provide proof of refund by a certain date or receive an additional monetary penalty.

#### Unlicensed Activity (7 complaints)

- CSR is working without a valid CSR license. A Citation and Fine is generally issued. However, if the CSR was working over three years without renewing their license, the license is cancelled. In order to resume practice, the CSR will have to take and pass all three portions of the examination.

Total Complaints: 96

Average time of complaint: 51 days (Note reviews take the most time.)

No backlog of complaints.

5. *What is being done to provide consumer protection to students of court reporting schools, to ensure that the students are receiving a quality education that will prepare them for the court reporters exam and practice?*



The CRB has statutory authority over the curriculum of court reporting schools in California. The curriculum is currently being addressed through an updating of the school reviews, which provide a mechanism to ensure students are providing a quality education as identified below.

The budget report for fiscal year 2007-08 reflects zero dollars for School Oversight because that line item is used to capture the costs of an in-house education consultant for onsite school reviews, of which there were none. At the end of the 2006-07 budget year and as a part of the previous strategic plan, the school review process was identified as a major Board function that was in need of revision. The Board worked very diligently during that time to update the school review criterion and to establish a two-phased approach to reviews.

2007-08. Phase One – Data Collection and Advance Information Gathering. This phase was designed to collect information generic to each of the 16 institutions. An overview of the review process and documentation expectations was provided to each school to facilitate the on-campus reviews. With this binder of paper and electronic information, the Board was able to identify those schools that required the most immediate personal contact for a review of their program.

2008-09. Phase Two – Onsite Review Component. The Board has selected four schools to review from the material submitted in Phase One. These schools will be required to provide additional details about their program to ensure consistency with CRB laws. A portion of this review includes interviews with program staff/instructors and voluntary interviews with students. When these reviews are complete, the CRB can consider the information and determine if additional school action or oversight is required. It is planned that information from Phase One will be used to schedule regular onsite reviews as needed with all schools of court reporting.

The Board also identified in the current strategic plan a need to consider an update of the school curriculum and the methodology for teaching in a classroom. The Board is developing a school curriculum committee. This committee will be tasked with identifying the subject/content areas and hours required for the educational component of a court reporter curriculum, consistent with the current trends of the profession and needs of the marketplace.

The implementation of the Phase One/Two school reviews, plus the committee input to assure that the school curriculum is timely and necessary, should provide that the students are receiving a quality education.

6. *What is the rationale for devoting so little of the Board's resources to School Oversight given the high drop out rates and low exam pass rates?*

See #5 above for resource allocation. Re: high dropout rates: The high dropout rate for students of court reporting is attributed to the performance requirements of the school program, not the educational/textbook curriculum requirements. The student must have and maintain the ability to listen to the spoken word and translate that information into stenography via a stenographic machine. This skill set starts at a low end of speed, scored as words per minute, and ends at the minimum requirement of 200 words per minute with a 97.5% accuracy rate.

The schools, testing professionals, psychometric associations, etc., have not been able to define a basic screening test or criteria to identify which reporter candidates possess this type of skill set prior to enrollment and investment of time in a court reporting school. Much as a pianist gets to a certain level and is unable to progress, a student reaches a “speed” wall on the machine and is unable to progress to the next levels that will satisfy the state minimum requirements for licensure. Unfortunately, this speed level is not generally reached until the third year of a four-year program.

Fortunately, the student can use that court reporting education and skills on the machine in other areas to obtain employment that does not require a state license as a Certified Shorthand Reporter. Jobs that require a high speed on a machine, such as acting as an interpreter in the classroom with a hearing impaired individual (translating the teachers’ spoken word into text for the student to read); providing notes of official meetings at the state/county/city level for official meetings of those governmental bodies; broadcast captioning (providing text services for live events as required by federal law) provide paid opportunities for these individuals to maximize their time spent learning the machine in school.

Regarding the concept of low pass rates, this profession is entirely about the accuracy of the record. As such, only those who possess the ability to quickly and accurately record live speech and translate that information into an official record for use in the judicial system are allowed into the profession. These abilities are defined through past and ongoing occupational analyses, which are the testing basis for a minimally competent court reporter. The definitions have been and continue to reflect this ability through a performance test consisting of reporting and transcribing ten minutes of four-voice live testimony dictated at 200 words per minute and graded at a 97.5% accuracy.

To ensure that the test maintains this standard, in the last few years the Board has updated its test development process to include a review of the dictated material by newly licensed reporters. This material is conducted under a mock test environment. The reporters provide their immediate feedback in terms of the difficulty of the material and changes can be made to ensure that the material is appropriate for a minimally competent reporter.

7. *The economy is affecting all businesses, including court-reporting schools. Recent years have seen the closure of several schools. Will the declining number of schools, continuing high number of dropouts, and continuing poor overall pass rates eventually lead to shortages in the profession, particularly if civil and criminal caseloads continue to increase?*

The economy is affecting all businesses, including the closure of schools. However, new schools have been started too. In the last four years, two schools have started new campuses in cities apart from their main campus, and two new schools have been created, all in areas where the concentration of students provides for an effective mainstay for schools. Schools, most notably the community colleges, are also combining programs to ensure the continuation of court reporting. Where in years past the number of students could support an independent court reporting program, now the business model includes “sharing” components of the program, such as the English, legal and medical curriculums with other business programs on campus. This shared teacher resource concept allows all programs to maximize their ability to provide standardized curriculum needs to students from all different programs to meet their particular educational requirements.



The number of licensed reporters has remained constant at about 7500 since the mid-1980s. During this time, the Board went from testing approximately 800 students twice per year to the current level of 100 students three times per year. During this same period, schools dropped from 25 to the current 16 schools. Schools also have the opportunity now to increase enrollment via distance learning, of which six schools now have an approved curriculum component for this process.

Although there is a large number of students who do not complete the program, they can use that coursework in other program areas, which allows for continuation of their education even though it is not in their chosen profession. Many court reporting programs now offer an Associate of Arts degree in reporting, so that same coursework can transfer to other fields offering the student continued progress in their education, towards a different career path.

It is likely that the future will reflect a shortage of reporters, although for different reasons than stated in the question. Enrollment in court reporting programs historically has been cyclical. When there is a shortage and high demand, enrollment goes up. When there are more reporters than positions, enrollment does down. The Board is aware of a potential shortage due to the aging population of current reporters nearing retirement combined with length of time necessary for students to complete the court reporting program. Recognizing a possible problem on the horizon, I will be reinstating a Technology Committee to keep the Board informed of technological advancements affecting reporter productivity as well as alternate methods of capturing the record.

8. *Given the fact that California is becoming a minority-majority state, are there efforts to recruit members of minority groups to become court reporters?*

For many years the majority of court reporters have been women. The flexibility offered in the freelance arena has turned out to be a good match for single mothers as well as women re-entering the workforce.

In the past few years, the Board has undertaken an educational effort to provide information at job fairs and consumer trade fairs and outreach to high schools on the benefits of the career of court reporting. This process continues to be an ongoing goal and is addressed in the Board's new strategic plan.

9. *What role, if any, do you believe the Board should play in addressing these pipeline issues?*

Having a neutral third party report proceedings has long been the backbone of the American legal system, protecting litigants' appeal and due process rights. Holding someone accountable for what he or she said is a basic tenet of civilization. Because a timely, accurate transcript is so essential, the CRB must be active in monitoring workforce trends as well as technological advances. The Board continues to provide this through the establishment of working committees, such as the Technology Committee and the School Curriculum Review Committee.

10. *Is the Board pursuing this legislation [mandatory continuing education] again?*



While still recognizing the importance of mandatory continuing education for both official and freelance reporters, the Board has voted not to use limited resources to pursue the issue during the current legislative cycle.

11. *What steps has the Board taken or will it take to address these concerns [complaints regarding inconsistency in reaching the Board by telephone]?*

We have implemented a toll-free number enabling licensees and consumers to call in with questions. The CRB has cross-trained staff members to enable them to give better customer service to anyone calling in to the Board. Responsiveness to consumers and licensees is an ongoing goal of the CRB.

12. *Was the increase in the TRF primarily due to recent legislation allowing non-profit agencies representing indigent clients access to the TRF, or were there other causes? Are TRF expenditures expected to continue to increase?*

*The budget for TRF has not increased nor have the claims against the TRF from AB1293, effective January 2007. TRF expenditures have remained constant at approximately \$220,000 since fiscal year 2005/06. The reported increase in the 2008-09 and 2009-10 budget is due to a change in the method of reporting budgeted amounts by the Department of Consumer Affairs budget office. The TRF fund is fully appropriated at \$300,000 per year. Since the fund historically has not been depleted, the DCA now rolls over \$100,000 from the CRB fund to the TRF fund as needed, up to a maximum of \$300,000. The \$175,000 reported for the 2007-08 TRF line item is based on actual expenditures for that category.*

13. *What was the reason for the 11% increase in expenditures from the Court Reporters Fund? Are these expenditures also expected to continue to increase?*

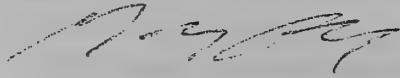
Of the 11% increase in expenditures for the Court Reporters Fund in 2009-10, \$81,000 is a one-time expenditure. This cost includes multiple workshops to develop written questions by subject matter experts as required by federal/state laws based on a brand new test development plan (Occupational Analysis). The remaining \$17,000, or 2% increase, is an ongoing cost for the computer based testing program implemented in July 2008.

14. *Will an increase in annual license fees, currently \$100, be needed in the near future to fund increased expenditures?*

The Department of Consumer Affairs noted last year that the CRB renewal fees were not keeping pace with common, routine expenditures and projected that renewal fees would need to be increased by fiscal year 2012/13. The Board has held this discussion at several Board meetings. The prevalent comment by licensees and licensee associations was that the license fee has not been raised since the mid-1980s and that the current fee was low in comparison to other professional licensed occupations, such as attorneys, contractors, etc. These groups indicated that a fee increase was overdue and that they would look to the Board for additional information on this issue. The

Board will be monitoring the time/necessity for any increase and providing open forums to all impacted parties for discussing their concerns on this issue.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Gregory M. Finch', with a stylized, cursive script.

Gregory M. Finch

GMF:mf

Enc:

# Court Reporters Board of California



Strategic Plan

2009-2011

Court Reporters Board of California  
2535 Capitol Oaks Drive, Suite 230  
Sacramento, CA 95833  
toll free: 877-327-5272  
916-263-3660  
fax: 916-263-3664



## Board Members

Gregory Finch, Chairperson

Public Member reappointed by the Governor to June 1, 2012

Toni O'Neill, Vice Chairperson

Licensee Member appointed by the Governor to June 1, 2009

Lori Gualco,

Public Member appointed by the Speaker of the Assembly to June 1, 2011

Elizabeth Lasensky

Public Member appointed by the Senate Rules Committee to June 1, 2010

Currently Vacant: Licensee Member appointed by the Governor

Yvonne Fenner, Executive Officer

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## Introduction

The integrity of our legal system rests on accurate records. Court reporters play an essential role in providing these transcripts by ensuring that there is a verbatim record of judicial proceedings.

The Court Reporters Board (CRB) of California was established in 1951 by an act of the Legislature. The Board is comprised of three members of the public and two licensed court reporters. The Governor appoints one member of the public and two licensed court reporters to the Board. The Speaker of the Assembly and the Senate Rules Committee each appoint one public member. All Board members serve staggered, four-year terms.

Funding for all of the Board's activities comes from examination and licensing fees. Because of this, the Board is considered a special fund, or self-funded agency. There are no General Fund tax dollars spent to support the Board or its functions.

The Board's mandate is to protect consumers from incompetent practitioners. It does this by:

- 1) Administering a competency test to ensure new court reporters possess the basic skills needed for the job;
- 2) Authorizing the minimum curriculum required by court reporting schools; and
- 3) Disciplining licensees when necessary.

The Board also administers the Transcript Reimbursement Fund (TRF), established through the collection of licensing fees. This fund provides greater access to the justice system for indigent civil litigants by providing transcript reimbursement costs to reporters.

As of February 10, 2009, the Board has issued 13,420 licenses. Of this number, there are 7,584 current licensees (licensees who have renewed their license - the Board does not track the number of current licensees that are actively *working*). In the profession, licensees are known as either *official reporters* who work in court or *freelancer reporters* who work independently or in the private market. Freelance reporters report depositions, hearings, arbitrations, etc.

The CRB office is located in Sacramento. There is an Executive Officer who oversees a staff of five people, including an enforcement analyst, an examination/licensing analyst, a TRF/school analyst, a committee/Board liaison, and a receptionist. Additional temporary staff is added based on seasonal workload and Board goals.



## Background and Strategic Planning Process

The Board currently has four of its five positions filled, allowing it to conduct all necessary business. Without having to redirect resources toward a labor-intensive Sunset Review, the Board was able to accomplish all of the 2006 strategic plan goals. Some of the most notable accomplishments included implementation of an e-mail distribution system, development and publication of a newsletter, and implementation of computer-based testing for the written portion of the license exam.

Always striving for excellence, the CRB has implemented a strategic planning process to identify key issues in the broader environment that affect the CRB; to clarify its mission, vision, and values; and to identify future goals, objectives, and priorities. This strategic plan update was preceded by an external environmental scan that was conducted by CRB members and staff as well as industry representatives. The scan identified the potential issues and challenges which might affect the CRB's ability to carry out its mission over the long term. The Board then held a public meeting with interested stakeholders in an effort to identify the strengths, weaknesses, opportunities, and threats that could impact the CRB, industry, and consumers. The Board then finalized the plan at its March 13, 2009 meeting.



## Mission

The mission of the CRB is to protect the health, safety, and welfare of the public by ensuring the integrity of judicial records through oversight of the court reporting profession. The CRB carries out this mission by testing, licensing, and disciplining court reporters, and by recognizing the schools of court reporting that meet state curriculum standards.

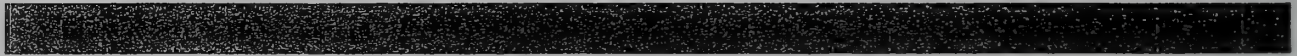
Specifically, the CRB's role is to:

- Ensure that those entering the practice meet minimum standards of competency by way of examination;
- Establish standards of practice for those licensed to practice court reporting;
- Impartially investigate and promptly resolve violations of laws, codes, and standards governing court reporting activities in a fair and uniform manner;
- Recognize those court reporting schools that meet and maintain state curriculum standards;
- Serve as a source of information about best practices, standards, and the profession of court reporting;
- Administer the Transcript Reimbursement Fund, which reimburses court reporters for providing transcripts to indigent civil litigants; and
- Evaluate new technologies and, if appropriate, help integrate the technologies into the practice of court reporting.

## Vision

To ensure protection of the consumer, the CRB will play a major role in ensuring that court reporters provide the highest quality professional services. Specifically,

- California court reporters will possess the knowledge, skills, and abilities that will enable them to produce accurate and timely judicial records, thereby protecting consumers' due process and appeal rights;
- California court reporters will be competent in all areas of practice and will adhere to high standards of technical competency and professional conduct;
- Candidates will have access to all necessary education and training materials either through high-quality schools or continuing education materials; and
- California court reporters will be respected by members of the court and public for their role as guardians of the record.



## Values

The CRB will strive for the highest possible quality throughout all of its programs, making it an effective and efficient court reporting regulatory agency.

To that end, the CRB will be:

- Consumer oriented, treating all persons who interact with the CRB as valued customers;
- Accountable to its membership, the government, and the general public;
- Progressive, utilizing the most advanced means for providing services; and
- Proactive, exercising leadership among consumer protection and professional practice groups.



## Goals

The CRB has established five goals which provide the framework for the results it wants to achieve in accomplishing its mission. These goals include:

### ORGANIZATIONAL EFFECTIVENESS

Enhance organizational effectiveness and improve the quality of customer service.

**There is an ongoing concern that the CRB will be eliminated.** In January 2009 the Governor included the elimination of the CRB in the proposed budget as a part of an attempt to streamline government. The CRB is fiscally sound as it is currently organized and must continue to work efficiently and effectively to protect the California consumer

### PROFESSIONAL QUALIFICATIONS

Ensure the professional qualifications of those practicing court reporting by establishing examination standards and requirements for continuing competency/education.

**There are currently no continuing education requirements for court reporters.** Given technological changes and the need for court reporters to keep their skills current, it may be wise to add such a requirement. There is also a continued need for mentors that are willing to work with new court reporters.

**Court reporting is increasingly being taught via distance learning (online courses).** The CRB will need to address the feasibility of approving such courses for the preparation of California court reporters.

### PRACTICE STANDARDS

Establish regulatory standards of practice for California court reporters.

**There is no clear definition as to what actions constitute professional misconduct, even though the majority of complaints the CRB receives are regarded as such.** Licensees should be apprised of what is actionable before a situation occurs that could subject them to discipline. After the adoption of the Professional Standards of Practice in 2007, the Board began a campaign to educate the licensees. The Board also implemented a toll-free number for consumers and licensees to get immediate answers to questions in an effort to help prevent misconduct and violations.

**Rapid changes in information technology (i.e. webstreaming) continue to have a dramatic impact on the profession of court reporting.** From web repositories to overseas outsourcing of transcript production, privacy issues continue to be challenged. Court reporters are also under increasing pressure to have the technological skills to remain competitive.

**The CRB needs to monitor how changes in practice may necessitate changes in regulation.** The CRB must ensure the security and privacy of recordings and documents through regulation as business continues to move toward a paperless world.



## ENFORCEMENT

Protect consumers by preventing violations and effectively enforcing laws, codes, and standards when violations occur.

**The firms that subcontract to court reporters are not regulated by the CRB, although practitioners are licensed.** These firms have the ability to affect the delivery and pricing of a transcript, which could impact the reporter's license under various regulatory codes. Firms should be liable for the work produced if personnel change the final transcript. This could be achieved through requiring all businesses that provide reporter services to conform to the same laws that regulate reporter licensees.

**The CRB continues to emphasize prevention of violations.** To that end, licensee education is of utmost importance, as is the toll-free help line.

## CONSUMER INFORMATION

Increase public and professional awareness of the CRB's mission, activities, and services.

**Consumers need to be aware of the CRB so that they can register complaints if necessary.** While the challenge of educating one-time litigants is perplexing, the CRB recognizes that more can be done to inform lawyers and other consumers of court reporter services as to the role of the Board in regulating the industry and enforcing standards.

**Enrollment in Court Reporter schools is static.** Workforce dynamics, including generational differences, may influence the profession's ability to attract sufficient candidates to meet future workforce needs. The CRB may need to consider its role – if any – in recruitment.

## Action Plan

The Action Plan is a dynamic framework for the many activities the CRB performs in accomplishing its mission. The goals and objectives are assigned to committees, subcommittees, task forces, staff members, or individuals to ensure completion of the CRB's goals and objectives. These goals are of equal importance to the Board's vision and are not listed in any priority order.

### Organizational Effectiveness

#### Ongoing Responsibilities

- Maintain a high level of customer service.
- Be fiscally prudent.
- Ensure competence of Board staff; evaluate staff performance.
- Maintain a budget.
- Maintain positive Board/staff relations.
- Administer the Transcript Reimbursement Fund.
- Maintain working relationships with professional associations and government agencies.

#### Objectives

#### Target Date

1. Update the Board on strategic plan progress.	June 2009
2. Keep website FAQs updated.	June 2009
3. Track and categorize types of complaints to ensure the Board is effectively addressing issues.	December 2009
4. Explore opportunities for improved operational efficiencies and design appropriate solutions.	July 2010

## Professional Qualifications

**Goal:** Ensure the professional qualifications of those practicing court reporting by setting requirements for education, examinations, and enforcement.

### Ongoing Responsibilities:

- Maintain competency of those practicing the profession.
- Establish curriculum standards.
- Conduct CSR examinations.
- Keep the court reporters exam up to date.
- Establish and conduct school performance reviews.

Objectives	Target Date
1. Conduct information sessions on CRB laws and regulations.	July 2009
2. Convene a taskforce or establish a committee to review school curricula and to identify enhanced student protections beyond existing statutes.	September 2009
3. Explore legislation/regulation to allow online curricula that would prepare students for the CSR exam.	January 2010
4. Design a strong voluntary continuing education program.	March 2010
5. Complete the occupational analysis to keep the exam up to date and in order to maintain competency.	September 2010

## Practice Standards

### Ongoing Responsibilities

- Report felonies and misdemeanors to the State Attorney General.
- Monitor the effect of technology on the profession.
- Set new standards of practice in accordance with changes in profession and consumer needs.
- Be proactive in recognizing and addressing industry trends and pending issues.

Objectives	Target Date
1. Develop best practices for use of backup audio media (BAM).	April 2009
2. Re-establish a committee or taskforce to deal with the impact of existing technologies and explore what is coming in the future.	July 2009
3. Update CRB disciplinary standards and educate consumers about those standards.	January 2010
4. Investigate and develop standards for preserving the integrity of electronic records, including the use of digital signatures.	November 2010
5. Develop a "best practices" standard to distribute to licensees.	January 2011



## Enforcement

### Ongoing Responsibilities

- Prosecute unlicensed reporters.
- Enforce standards of practice.
- Investigate complaints.
- File accusations with the Attorney General as appropriate.
- Issue citations and fines.
- Monitor prominent legal cases for potential unethical practices.
- Educate licensees to reduce violations.

### Objectives

Objectives	Target Date
1. Support oversight regulation of court reporting firms as approved by the Board in 2008, specifically within Section 8046 of B&P, expanding the term "shorthand reporting corporation" to all business entities (i.e., corporation, firm, partnership, sole proprietorship).	March 2009
2. Review and update enforcement regulations.	September 2010

## Consumer Information

### Ongoing Responsibilities

- Be prevention oriented.
- Provide information for licensees regarding practice standards.
- Use the website effectively to communicate with consumers, licensees, and schools.
- Increase consumer awareness of the CRB's role.

### Objectives

Objectives	Target Date
1. Identify current and future workforce trends.	December 2009
2. Develop a CSR "pledge" for new licensees.	February 2010
3. Expand the use of electronic communications to consumers and licensees.	July 2010
4. Develop and implement a consumer information communications plan.	September 2010
5. Develop an online test regarding CRB rules and regulations. The exam could count toward CE requirements of Administrative Office of the Courts, National Court Reporters Association, State Bar of California.	September 2010

THE HISTORY OF THE UNITED STATES OF AMERICA

The history of the United States of America is a story of growth and change. It begins with the first settlers who came to the New World in search of a better life. They found a land of opportunity, but also a land of challenge. The early years were marked by conflict and struggle, as the settlers fought to establish their own communities and defend themselves against the forces of nature and the indigenous peoples. Over time, the United States grew from a small collection of colonies into a powerful nation, with a rich and diverse culture. The story of the United States is a story of the human spirit, of the pursuit of freedom and the dream of a better future.

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HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

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WEDNESDAY, APRIL 29, 2009

2:21 P.M.

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Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

--o0o--

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

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APPEARANCES

MEMBERS PRESENT

4 SENATOR DARRELL STEINBERG, Chair

5 SENATOR GIL CEDILLO

6 SENATOR SAMUEL AANESTAD

7 SENATOR ROBERT DUTTON

8 SENATOR JENNY OROPEZA

STAFF PRESENT

12 GREG SCHMIDT, Executive Officer

13 JANE LEONARD BROWN, Committee Assistant

14 NETTIE SABELHAUS, Appointments Consultant

15 DAN SAVAGE, Assistant to SENATOR CEDILLO

16 BILL BAILEY, Assistant to SENATOR AANESTAD

17 CHRIS BURNS, Assistant to SENATOR DUTTON

18 BRENDAN HUGHES, Assistant to SENATOR OROPEZA

ALSO PRESENT

22 RACHEL RIOS, Director, Juvenile Parole Operations, Department of Corrections and Rehabilitation

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v

1 MS. BROWN: Senator Cedillo.  
2 SENATOR CEDILLO: Aye.  
3 MS. BROWN: Cedillo aye.  
4 Dutton.  
5 SENATOR DUTTON: Aye.  
6 MS. BROWN: Dutton aye.  
7 Oropeza.  
8 SENATOR OROPEZA: Aye.  
9 MS. BROWN: Oropeza aye.  
10 Aanestad.  
11 SENATOR AANESTAD: Aye.  
12 MS. BROWN: Aanestad aye.  
13 Steinberg.  
14 CHAIRMAN STEINBERG: Aye.  
15 MS. BROWN: Steinberg aye.  
16 CHAIRMAN STEINBERG: That measure passes  
17 five nothing.  
18 We move to file item two, Governor's  
19 appointee appearing today. We have one appearing  
20 today. I'd like to welcome Rachel Rios, who is up  
21 for confirmation as the director of Juvenile Parole  
22 Operations, Department of Corrections and  
23 Rehabilitation.  
24 Welcome. Please come forward. Either chair  
25 is fine. Whatever works. We have water there and

2

1 **PROCEEDINGS**  
2 CHAIRMAN STEINBERG: The Senate Rules  
3 Committee will come to order. Good afternoon,  
4 everyone.  
5 Please call the roll.  
6 MS. BROWN: Senator Cedillo.  
7 SENATOR CEDILLO: Present.  
8 MS. BROWN: Cedillo here.  
9 Dutton.  
10 SENATOR DUTTON: Here.  
11 MS. BROWN: Dutton here.  
12 Oropeza.  
13 SENATOR OROPEZA: Here.  
14 MS. BROWN: Oropeza here.  
15 Aanestad.  
16 SENATOR AANESTAD: Here.  
17 MS. BROWN: Aanestad here.  
18 Steinberg.  
19 CHAIRMAN STEINBERG: Here.  
20 MS. BROWN: Steinberg here.  
21 CHAIRMAN STEINBERG: A quorum is present.  
22 We'd like to begin today by taking up file  
23 item one, reference of bills. Are there any issues?  
24 If not, a motion by Senator Dutton.  
25 Please call the roll.

1

1 all that.  
2 I'd like to welcome you.  
3 MS. RIOS: Thank you.  
4 CHAIRMAN STEINBERG: And as part of our sort  
5 of tradition in the Rules Committee, we'd like to  
6 invite each of the nominees to introduce any member  
7 of their family or special guest that may be with you  
8 today.  
9 MS. RIOS: I'd like to introduce my husband,  
10 Bill Campos.  
11 CHAIRMAN STEINBERG: Raise your hand.  
12 There you go, sir. Welcome to you. Welcome to you.  
13 Good afternoon. We have just finished a  
14 lengthy set of hearings confirming Matt Cate as the  
15 director of CDCR. We took our time, because the  
16 challenges faced by both the adult and juvenile  
17 divisions are great, and we wanted to make sure that  
18 as we go forward, that some of the promises that have  
19 been made in general over the years, that there was  
20 actually a plan for follow-through.  
21 And I suppose as we begin this confirmation  
22 hearing, Ms. Rios, that we really want to hear from  
23 you not just your hopes and your aspirations, but  
24 also how you specifically plan to improve that which  
25 you are responsible for at DJJ.

3



1 And with that, please feel free to make an  
2 opening statement, and then we will have some  
3 questions for you.  
4 MS. RIOS: Thank you, Mr. Chair and Members  
5 of the Committee. I want to thank you for allowing  
6 me to speak with you today. I'm extremely honored to  
7 be sitting before you this afternoon, and I want to  
8 thank Secretary Cate and Chief Deputy Secretary  
9 Warner for having the confidence to provide me with  
10 this opportunity.

11 I'm a little nervous today, so I'm going to  
12 go ahead and read my statement.

13 I also want to thank my colleagues and my  
14 staff who have supported and assisted me over the  
15 last ten months, and most important my family.

16 I would like to begin today by sharing some  
17 of my experience and convey to you my commitment and  
18 passion for the work that we do.

19 I've been with DJJ, formerly the CYA, for  
20 over 25 years. I have extensive statewide experience  
21 as a parole agent and a parole supervisor. I've been  
22 an assistant superintendent, and most recently I was  
23 administrator over the intake and court services  
24 unit. But my work with DJJ actually began more than  
25 30 years ago. I worked in community-based

4

1 organizations with young people, preventing them from  
2 coming into the criminal justice system. I worked  
3 with foster care youth, substance abuse youth, and  
4 DJJ parolees. As I said, my primary goal then was  
5 to keep youth from going further into the criminal  
6 justice system. Today, that's still my goal.

7 My belief in the power of community support  
8 is fueled by my own experiences as a young person who  
9 overcame struggles and challenges. That I have the  
10 opportunity to be before you today seeking  
11 confirmation for the position of director of juvenile  
12 parole is a result of caring people and community  
13 programs that were available to me when I needed  
14 help.

15 Because of those experiences and my work in  
16 the community, I have a unique appreciation and  
17 recognition for the fact that no one does anything  
18 together (verbatim). Collectively, we will continue  
19 to help young people turn their lives around.

20 In the short time that I've been the  
21 director of juvenile parole, I have focused my  
22 efforts on integrating *Farrell* and *LH* mandates into  
23 our work and have introduced an enhanced six-phase  
24 parole continuum. This model supports the fact that  
25 parole has a critical role in the continuum of care,

5

1 which means we are not just aftercare. We are the  
2 care.

3 As the director of parole, I have been  
4 continuously inspired by the efforts of our staff in  
5 the field and their commitment to this work. It is  
6 that spirit and belief in people's ability to grow  
7 and change that brings me before you today.

8 CHAIRMAN STEINBERG: Thank you. Thank you  
9 very much. I know I have a few questions. Should I  
10 start? Okay.

11 You asked -- no.

12 Let me begin by asking you the following: The  
13 position was vacant for three years, your position, and  
14 the top two people that directly -- under you are  
15 currently vacant. One of the concerns that we have in  
16 this entire area is about recruitment and retention, and  
17 how long it takes to get good, qualified people into  
18 these important positions.

19 When do you anticipate permanent people in  
20 these two very important posts?

21 MS. RIOS: We have just recently interviewed  
22 for the positions. We started interviews in the last  
23 week. We've interviewed for -- I have three  
24 positions. Actually, we interviewed for one  
25 position. We are scheduled to complete interviews,

6

1 hopefully, in the next coming weeks.

2 The vacancies have been due to retirements.  
3 As you know, all throughout the DJJ, and not just  
4 DJJ, but in the public sector, we are going through a  
5 phase of succession planning. One of the things that  
6 we have done in DJJ parole is that we have  
7 embraced the secretary's commitment to succession  
8 planning, and we have incorporated the department's  
9 succession management program. We have had  
10 presentation by the team, and we will plan to roll  
11 that out with our middle managers, which means they  
12 will go through an evaluation to prepare people --

13 CHAIRMAN STEINBERG: Slow down just a little  
14 bit for our court reporter.

15 THE REPORTER: Thank you.

16 Go ahead.

17 MS. RIOS: So we are working towards  
18 preparing a succession planning -- a succession plan  
19 so we are not in this situation in the future.

20 CHAIRMAN STEINBERG: So how -- Bottom line,  
21 four months, six months, two months?

22 MS. RIOS: We hope that we will make  
23 selections in mid-May and go through the process, and  
24 hopefully we'll have someone by June.

25 CHAIRMAN STEINBERG: Okay. We will follow

7

1 up on that.

2 One statistic that really strikes me as

3 troubling is what the legislative analyst has told us,

4 that each parole agent is typically responsible for

5 supervising offenders in territory covering 2800

6 square miles. How can we possibly do justice to

7 supervising these young people with that wide of a

8 territory?

9 MS. RIOS: We do have one parole office that

10 covers multiple counties. Most parole offices cover

11 more than one county, but we have one that covers

12 several counties, and that can be a challenge. But

13 what we do have is resident agents. The resident

14 agents cover certain territories. We work with

15 either -- community organizations, and we also have

16 some offices sometimes in the adult parole offices

17 that we have our agent stationed out so that they're

18 able to better serve their population. But, again,

19 those are some of our rural commitments.

20 Certainly, more than half of our population

21 is in Southern California, which is a very urban

22 community, so those agents do not have those

23 distances to travel.

24 CHAIRMAN STEINBERG: Do you think that your

25 division does a sufficient job rehabilitating

8

1 parolees?

2 MS. RIOS: I think we can do a better job,

3 and we would like to do a better job; but we do offer

4 a lot of programs for our young people. We offer --

5 There are services that we offer. We offer

6 educational services, we offer mental health

7 services, sex behavior counseling services, as well

8 as placement services.

9 We are working at looking at the

10 evidence-based programs that are available to us so

11 we can track our successes and really focus our

12 efforts and our resources on those programs that are

13 the most effective.

14 CHAIRMAN STEINBERG: In what percentage of

15 the cases are you able to provide comprehensive,

16 wraparound, integrated services, call it what you

17 will, for your parolees?

18 MS. RIOS: That's a little difficult to

19 respond to, because it depends on what the youth's

20 needs are. So we have approximately 30 percent of

21 our youth that have mental health issues. We should

22 be able to provide services to all those youth,

23 whether it's mental health counseling -- just a small

24 percentage need, possibly, inpatient care and more

25 acute care. But we try to provide services to all

9

1 the youth that we have identified. Again, it's

2 difficult, because every youth needs something

3 different.

4 Through the challenge grant, we were able to

5 fund five programs statewide that do provide

6 specifically wraparound services that include the

7 placement, the mental health services, the

8 employability services. And in that program, we were

9 able to provide services to about 20 percent of the

10 population just with those five programs.

11 CHAIRMAN STEINBERG: You said that in your

12 view, the department could do better. Maybe you

13 could amplify that a little bit, especially in the

14 program and services side.

15 MS. RIOS: In parole, one of the things that

16 I have undertaken is looking at the programs that we

17 currently have and looking at the services that we're

18 currently providing, and charting that to see what

19 services we're providing and how are those services

20 being received so that we can better direct our

21 resources to see if that's where we need to be

22 providing our resources.

23 And so that evaluation of what those

24 services are, comparing that with evidence-based

25 programs to see if those are in line with our

10

1 integrated behavior treatment model, those are some

2 of the ways that I think that we can do a better job.

3 CHAIRMAN STEINBERG: Do you have benchmarks?

4 MS. RIOS: We do. We have actually just

5 started to revise our COMPSTAT reporting. We will be

6 changing the factors that we will be looking at, and

7 that will be in conjunction with our goals in terms

8 of identifying what are the services that we think

9 are most necessary.

10 CHAIRMAN STEINBERG: Will that be a public

11 document, or set of documents?

12 MS. RIOS: It can be a public document. I

13 believe our COMPSTAT reports are public documents.

14 CHAIRMAN STEINBERG: Okay. And when will

15 that document be updated or --

16 MS. RIOS: We hope to have that done within

17 the next two weeks so that we can capture the first

18 quarter, which would be ending in April. We want to

19 capture a quarter for our report that we have for the

20 secretary in August, so we'd like to be able to

21 report to him this new data element.

22 CHAIRMAN STEINBERG: I would ask that this

23 Committee as well receive -- receive the report,

24 please --

25 MS. RIOS: Absolutely.

11



1 CHAIRMAN STEINBERG: -- because in our role  
2 as overseers of the executive branch of government,  
3 we can help you. We can help you push for change,  
4 attention for resources, but we can't do that unless  
5 we're on the same page with you as to where we're  
6 trying to go. And what we know is that while some  
7 parolees are receiving the sorts of challenge grant  
8 comprehensive services you described, that  
9 undoubtedly there are many more who need that kind of  
10 service who aren't getting them.

11 So how we commit ourselves together to  
12 increasing those percentages and then holding  
13 ourselves and you accountable is crucial. You can  
14 hold us accountable through the appropriations  
15 process, and we can hold you accountable through the  
16 actual implementation, if we're able to find you  
17 resources.

18 MS. RIOS: Absolutely. And I would invite  
19 the Committee to let us know if there's certain data  
20 elements that you would like us to start tracking.  
21 Since we're revising that tool right now, we would be  
22 happy to get those.

23 CHAIRMAN STEINBERG: Okay. Ms. Sabelhaus  
24 will follow up after the hearing. Thank you.

25 Any questions from other Committee Members?

12

1 placement. So we do have some that we pay for  
2 placements.

3 SENATOR AANESTAD: Changing the subject a  
4 little bit, another interesting fact that we've been  
5 made aware of here is more people go to prison --  
6 more adults go to prison through the parole system  
7 and the revocation of parole than actual courts and  
8 new cases -- I don't know if you're aware of that --  
9 which says there's something drastically wrong with  
10 the parole system that we have, or at least to me it  
11 suggests that. How does that apply to the juveniles?

12 MS. RIOS: I don't have statistics for you  
13 on how many of our youth go from DJJ to an adult  
14 prison. I do know that about 13, close to 14 percent  
15 of our youth go back to DJJ on revocations, and then  
16 there's obviously a portion of them that may commit  
17 additional crimes.

18 DJJ parole and adult parole, while having  
19 similar missions, we do have different missions. DJJ  
20 parole provides intensive levels of supervision, and  
21 we provide a lot more treatment/rehabilitative model.  
22 So it's a little bit difficult to respond in terms of  
23 the adult statistics. I'm not too familiar with  
24 those.

25 SENATOR AANESTAD: An then, finally, this

14

1 Senator Aanestad.

2 SENATOR AANESTAD: Thank you, Ms. Rios. I  
3 appreciate the time that we spent talking this  
4 morning, and you answered most of my questions there.

5 Two things come to mind: First of all,  
6 talking about mental health, and 30 percent of your  
7 patients require mental health treatment, what level  
8 of mental health care is it? Are these just  
9 psychological problems that require counseling, or  
10 are we talking about actually psychiatric problems  
11 that require medication?

12 MS. RIOS: It's a wide range. There's some  
13 youth that just require counseling, it is youth that  
14 already are on medication, and in extreme cases it is  
15 some youth that require hospitalization. So it's a  
16 wide range of services.

17 SENATOR AANESTAD: And when you need  
18 psychiatric treatment that requires hospitalization,  
19 is that a cost that is costed to your department, or  
20 does it -- does the funding come from elsewhere?

21 MS. RIOS: It varies. In some situations,  
22 if you have medical assistance, then most of the time  
23 the medical assistance will cover those stays.

24 We do have some programs that maybe are not  
25 as acute care that DJJ will pay for in terms of

13

1 morning I asked you a question about how can the  
2 legislature best help you. You had a very  
3 interesting answer. The Chair just asked -- just  
4 made the statement, "We can help you."

5 CHAIRMAN STEINBERG: Maybe.

6 SENATOR AANESTAD: Can you give us your  
7 honest reaction to my question this morning?

8 MS. RIOS: Absolutely. When the Senator  
9 asked how they could help, how he could help, one of  
10 the things that I said was that DJJ, over the last  
11 three or four years, has gone through a tremendous  
12 transformation. We've had reviews and audits and  
13 reform, and there's many folks looking at us. And  
14 much of that is very needed and very important.

15 We want to have some time to be able to  
16 actually implement some of these things, but the best  
17 way I think you can help us in parole is to come see  
18 what we do. I invite you to come and see the  
19 programs that we have, and I invite you to see the  
20 successful parolee banquet that we will be having in  
21 June to see these young men be honored and to see  
22 their accomplishments, to come see our graduation in  
23 Southern California where all of our parole offices  
24 participate in a graduation, and all of the parolees  
25 from all of the offices come for our basketball

15



1 tournament where every office gets a team of parolees  
2 that competes with each other, you know. I invite  
3 you to come and see what we do. That's, I think, the  
4 best way you can help us.

5 CHAIRMAN STEINBERG: Is there still a  
6 Volunteers in Parole program?

7 MS. RIOS: Yes, there is. As a matter of  
8 fact, I just attended an event on Friday, I believe  
9 it was. It is not funded by DJJ. DJJ is no longer  
10 funding the Volunteers in Parole program. However,  
11 Volunteers in Parole still exists, and they still  
12 provide services to our youth and to adult parolees  
13 as well.

14 CHAIRMAN STEINBERG: Very good. Senator  
15 Oropeza.

16 SENATOR OROPEZA: Thank you very much,  
17 Mr. Chair.

18 Welcome, Ms. Rios.

19 MS. RIOS: Thank you.

20 SENATOR OROPEZA: I have a couple of  
21 questions for you.

22 Am I correct that DJJ is responsible for  
23 about 2,000 parolees?

24 MS. RIOS: Yes.

25 SENATOR OROPEZA: That's the number.

16

1 I'm looking at your COMPSTAT report, and it  
2 says, for example, that the total number of treatment  
3 beds, including mental health, substance abuse, and  
4 sex offenders, has been identified as 319 beds, and  
5 that of those 188 are filled. That's 60 percent of  
6 the beds filled. Could you comment on why that's the  
7 case and why all those beds aren't filled? It just  
8 seems like there would be need.

9 MS. RIOS: Absolutely, and there is. And  
10 it's a matter of having the resources, the right --

11 SENATOR OROPEZA: I'm sorry. I can't hear  
12 you.

13 MS. RIOS: I think it's a matter of having  
14 the right resources in the right areas. We have been  
15 fortunate that in some areas, in some communities,  
16 we've been able to establish more resources. But in  
17 other areas, for example, in rural communities, it's  
18 a little more difficult. So while the need may still  
19 exist, and it may look like we're not completely  
20 utilizing all of our resources, it's about putting  
21 the resource where the need is.

22 So that's part of what our evaluation is, is  
23 to identify where are these youth that have these  
24 mental health issues, what populations are they in,  
25 what communities are they in, and ensuring that the

17

1 resource beds are where the youth need them to be,  
2 not where we've been able to develop them. So that's  
3 a reflection of what you see in those statistics.

4 SENATOR OROPEZA: Well, rural communities  
5 I'm sure have their problems, but urban communities  
6 do too. I cannot imagine that just within the urban  
7 communities, there are not more than 188 youngsters  
8 in the system that need this kind of treatment. So  
9 why isn't there a better connect? Why isn't there  
10 treatment where there's need, as you said, and in an  
11 urban area where there should be no problem -- You  
12 mentioned rural, with getting resources -- and by  
13 "resources," I assume you mean people. Do you mean  
14 people or money?

15 MS. RIOS: No, I mean finding the  
16 appropriate group home or treatment facility that's  
17 willing to work with our population, finding those  
18 services that are available to us.

19 What's reflected here in terms of treatment  
20 beds, these are the higher end of -- as I believe one  
21 of the questions was the range of services. These  
22 are the higher range of services. So, in fact, maybe  
23 some of these youth may be in other group-home-type  
24 placements and don't require this level of care.

25 SENATOR OROPEZA: Where would they be

18

1 reflected on your COMPSTAT report?

2 MS. RIOS: They would be in either our  
3 placements -- and I believe there is on the first  
4 page, number of placements, DJJ-subsidized  
5 placements, parole subsidized. On the first page.

6 SENATOR OROPEZA: I'm looking. I'm looking.  
7 I'm looking.

8 MS. RIOS: Two hundred twenty-four.

9 SENATOR OROPEZA: Okay. Got it.

10 "DJJ parole subsidized," and that means that  
11 it's a placement in a group home or some other kind  
12 of home?

13 MS. RIOS: Right, in a group home. And,  
14 again, the level of care varies. It could be a group  
15 home that's very structured, that has some mental  
16 health services, as opposed to one that has medical  
17 or psychological acute care.

18 SENATOR OROPEZA: And there are 92 of those  
19 in all of Southern California.

20 I'm pressing on this point, because it's  
21 clear there's a disconnect and there's a problem.  
22 Wouldn't you say that there's a problem?

23 MS. RIOS: I -- I believe that we need to do  
24 a better job of looking for the appropriate  
25 placements for young people. The placement issue by

19

1 itself -- A lot of youth have families, or they want  
2 to go home, and so that's certainly where we want  
3 them to go first if that's a viable option. If they  
4 don't have that, if they don't have that resource  
5 available to them, then that's where our placements  
6 come in. If they need those medical or mental health  
7 services, then that's where our placements come in.

8 SENATOR OROPEZA: So the mental health and  
9 the other services, the substance abuse services, you  
10 would send a kid home and then do --

11 MS. RIOS: Outpatient.

12 SENATOR OROPEZA: -- outpatient as opposed  
13 to wraparound services.

14 MS. RIOS: Absolutely.

15 SENATOR OROPEZA: Is it a policy similar to  
16 what adoption -- I mean, where family services has  
17 been in the past, which is always the top priority is  
18 reunification with the family, and then some other  
19 option if the family does not work out or is not  
20 around?

21 MS. RIOS: Absolutely. Absolutely. We know  
22 that family engagement plays a critical role in the  
23 youth's success back in the community. So we always  
24 want to work together with the family to see if  
25 that's an option. We invite the family to be part of

20

1 the treatment plan.

2 Many of our educational programs allow  
3 family members to be a part of that education with  
4 that youth so that they can also work with us in  
5 rehabilitating that youth.

6 SENATOR OROPEZA: And I'm assuming the  
7 families are well screened, and it's not second-  
8 generation criminal activity, that we're putting a  
9 child back into a situation that's second- or  
10 third-generation gangsters, or whatever the case may  
11 be.

12 MS. RIOS: We do look at that when we see  
13 that that's going to be a safety issue for them with  
14 the family. If there's another member on parole or  
15 probation, that is one of the criteria we will look  
16 for. It doesn't mean we would automatically screen  
17 them out, but it means that we will look closer at  
18 that situation and determine whether or not the  
19 family -- the parents have control of that situation,  
20 and whether or not that can still be a viable option.  
21 And if it's not, then the youth is not allowed to be  
22 placed there.

23 SENATOR OROPEZA: Okay. Can you share with  
24 me what your recidivism rate is?

25 MS. RIOS: Well, currently, DJJ does not

21

1 report on recidivism rate. The last reports that we  
2 had indicated that our recidivism rate was about 67,  
3 68 percent. We have lots of research about what  
4 those factors should be in terms of collecting that  
5 information, and that is something that chief deputy  
6 secretary and I are going to be working with our  
7 research --

8 SENATOR OROPEZA: When is the last time they  
9 had a report?

10 MS. RIOS: I want to say that -- I'm not  
11 absolutely sure, Senator, but I believe it was about  
12 three or four years ago.

13 SENATOR OROPEZA: Okay. I would say that in  
14 the short term, while you're what calculates as the  
15 return group --

16 I can appreciate, you know, if somebody  
17 comes in for one day, maybe they don't count as a  
18 person who, you know, has really returned to the  
19 system. Maybe they're being held for a day or  
20 whatever. But it just seems to me that on raw  
21 numbers at least, or some way --

22 I mean, you guys keep track of everything in  
23 your shop. You count cells; you count how many  
24 people are in the cells; you count how many people  
25 are in the main yard -- I mean, you count everything.

22

1 So there seems like there ought to be a way --

2 Understanding that it may need to be  
3 nuanced, but there's no way to evaluate, because, you  
4 see, recidivism, to us anyway, is a key measure of  
5 success or failure, if not the measure of success or  
6 failure. And if the agency, the department, cannot  
7 give us that data, that is a huge failing. That  
8 says, "We're not going to be accountable." And I  
9 cannot imagine that the director, after spending  
10 three days with him, or others, would accept that as  
11 a condition.

12 So what is your plan for working with the --  
13 is it the deputy director, or who is it that you said  
14 you're going to work with.

15 MS. RIOS: Our research division. We've  
16 brought this issue to them.

17 I think part of the issue is defining what  
18 recidivism is. And in the past, recidivism was  
19 counted by any time a youth was arrested, that was  
20 counted as a youth that recidivated. And we know  
21 that our youth live in communities where many times  
22 they are arrested, and then it's not them, or  
23 something is dropped, and they're released and they  
24 go back into the community, and maybe they move  
25 forward.

23



1 So we really need to define what are the  
2 elements that tell us that someone did recidivate,  
3 and that's one of the questions we're hoping to  
4 engage in with our research division.

5 SENATOR OROPEZA: But do you know how long  
6 you plan to wait before that work can be completed?  
7 In the meantime -- If it's going to take a long time  
8 conducting research and all that, then you should  
9 think of something else, because this question is not  
10 going to go away. There are lots of eyes on this.

11 MS. RIOS: I agree with you, and some of the  
12 data elements that we're looking at in the COMPSTAT  
13 report will help us track that. As you indicated, we  
14 do track a lot of things. So, hopefully, these data  
15 elements will help us track so that when we come up  
16 with the appropriate definition for recidivism, we  
17 will have the information to be able to feed that  
18 into it. We'll have the numbers. And as you  
19 indicated, we do track a lot of information, so we  
20 should be able to do that.

21 SENATOR OROPEZA: When do you think that's  
22 going to happen?

23 MS. RIOS: I couldn't give you a complete  
24 answer.

25 SENATOR OROPEZA: Has the research begun?  
24

1 Has the project begun?

2 MS. RIOS: We've only engaged in  
3 conversations with our research division, and so we  
4 haven't gotten a timetable in terms of when we will  
5 be able to accomplish that.

6 SENATOR OROPEZA: So we don't know when.

7 MS. RIOS: I'm sorry.

8 SENATOR OROPEZA: That's disappointing.  
9 That's very disappointing.

10 CHAIRMAN STEINBERG: I'd like to pick up on  
11 this.

12 I know it's not all your responsibility  
13 here, but -- you know, as we do with Mr. Cate -- but  
14 these are major concerns that we have about the  
15 operation of the department itself. It really flies  
16 in the face of reason and common sense that the prime  
17 measurement of the parole division would not be the  
18 rate at which you reduce recidivism, because it  
19 guides what we ought to be doing, what you ought to  
20 be doing, on the program side. It ought to guide  
21 what we're doing on the parole-officer-to-parolee  
22 ratio. I mean, there's so many decisions we ought to  
23 make based upon whether or not we are succeeding or  
24 not succeeding in reducing recidivism.

25 And this is one I would say, honestly, the  
25

1 department needs to get on right away. I mean,  
2 you've got the court that's unhappy with the  
3 department, you've got policymakers who, frankly, are  
4 dubious about whether or not the DJJ ought to even  
5 continue to exist as an entity. And what Senator  
6 Oropeza just raised, I just think is -- is really  
7 central to those concerns.

8 We need to be data-driven, but data-driven  
9 around the outcome that we are most concerned about.  
10 Is this system, either institutionally or the parole  
11 side of it, doing enough to make sure that these  
12 youth -- they're not even adults yet in many  
13 instances -- are getting the discipline and the  
14 rehabilitation that they need to not become adult  
15 offenders? That's got to get back. We need that  
16 info.

17 MS. RIOS: I agree with you, and I think the  
18 first step that we need to do is to define what  
19 recidivism is, because if it is just returns to  
20 DJJ facilities, we obviously have that percentage,  
21 and we have that information. But I think it goes  
22 beyond just a return to a DJJ facility.

23 CHAIRMAN STEINBERG: Fair enough. How many  
24 of these young people get employed in full-time,  
25 gainful employment; how many go back to school; how  
26

1 many do not get convicted of further crime. Arrests  
2 may or may not be relevant, I don't know. But,  
3 respectfully, as the old saying goes: It's not  
4 rocket science. I mean, I think in a one-afternoon  
5 meeting, the department hierarchy can come to an  
6 agreement on what recidivism is, define it in, you  
7 know, an appropriate way, and then let's start  
8 moving. Start moving.

9 Other questions?

10 SENATOR OROPEZA: Just -- Do you all have a  
11 director of correctional education yet? I know it's  
12 been opened. Has it been filled?

13 MS. RIOS: No, it has not been filled.

14 SENATOR OROPEZA: Do you have any time frame  
15 for that, or do you have any idea?

16 MS. RIOS: That's not my area. I'm not  
17 familiar with the director of programs, in terms of  
18 what they've done.

19 SENATOR OROPEZA: Fair enough. Okay. All  
20 right. Thanks.

21 CHAIRMAN STEINBERG: Okay. Senator Dutton.

22 SENATOR DUTTON: Just a couple real quick.  
23 Actually, one on something Senator Oropeza was  
24 bringing up.

25 We were talking about the rates and so  
27



1 forth. There's a line item here on this page one.  
2 It's non-DJJ parole subsidized.  
3 MS. RIOS: Yes.  
4 SENATOR DUTTON: It's on the first page.  
5 What is that?  
6 MS. RIOS: Those are youth that are living  
7 either at home or on their own. They're not -- We're  
8 not paying for their residential care.  
9 SENATOR DUTTON: So if I was to look at the  
10 Southern California region, I would say it has a lot  
11 more than others. Is that because we're doing a  
12 better job, or is it coincidental that Southern  
13 California has got more of them than they actually do  
14 parole subsidized?  
15 MS. RIOS: It could be that the needs of the  
16 youth is -- Northern California tend to be more rural  
17 counties, tend to be less resources available for  
18 them, and it could be that family members are not  
19 available. So that could be part of the issue.  
20 SENATOR DUTTON: Okay. So you can't just  
21 look at 92 versus 132. You have to look at the  
22 totality.  
23 MS. RIOS: Exactly.  
24 SENATOR DUTTON: Southern California, we  
25 actually have more that are in home services than

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1 very important.  
2 And we also recognize that 18 isn't a magic  
3 number. Again, foster care youth have also  
4 recognized -- Counties have recognized that at 18,  
5 youth are not necessarily ready to be on their own,  
6 so they have increased their range of services into  
7 the 20s as well.  
8 SENATOR DUTTON: What would you say on the  
9 other side -- What is the youngest juveniles we have  
10 in our system right now?  
11 MS. RIOS: Sixteen, 17.  
12 SENATOR DUTTON: It almost seems to me like  
13 we need a split someplace in between for secondary  
14 facilities.  
15 SENATOR OROPEZA: That's the county jails.  
16 I mean, haven't we devolved a lot of the less-  
17 hardened criminals to the county system?  
18 SENATOR DUTTON: I'm talking about what's in  
19 our state.  
20 MS. RIOS: Right. They may be younger in  
21 the facilities when they get committed and when they  
22 go to a facility, but when they're released, 16, 17  
23 is about the youngest that we have right now.  
24 And Senator Oropeza was correct. Our  
25 population is about 5 percent -- 5 percent that has

30

1 would be in the other services.  
2 MS. RIOS: And, of course, in the northern  
3 region we service more counties than in the southern  
4 region.  
5 SENATOR DUTTON: Okay. Also, too, sometimes  
6 we cite -- The juvenile system, it's not juvenile in  
7 the sense that they're 18 or under. The average age  
8 is, like, 19, almost 20 years old. So these are  
9 people that are older. They're young adults, more or  
10 less.  
11 MS. RIOS: Um-hmm.  
12 SENATOR DUTTON: Okay. Is there a  
13 particular age group in the state -- because the  
14 state -- we contract out with the county. The  
15 population that are under the control right now -- or  
16 the state has control of -- I guess that's probably  
17 what this number is -- those are generally older  
18 juveniles?  
19 MS. RIOS: Yes. Our population is older.  
20 We do go through age 25. You know, our youth, we do  
21 have youth that do expire at 21, our 290s or our sex  
22 offenders, but most of our other offenders do go to  
23 age 25. We do provide services for them. There is  
24 an overlap in terms of the age range in terms of  
25 adult, but we feel that the services we provide are

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1 already gone through the county system and the most  
2 difficult and more violent offenders.  
3 SENATOR DUTTON: Now one thing I'm curious  
4 about, I've seen a lot of people -- kind of a  
5 revolving door of people coming in to all parts of  
6 the department.  
7 Are you planning to be here for a while so  
8 we can get a report that actually starts and finishes  
9 with you?  
10 MS. RIOS: Well, I certainly hope to be here  
11 for a while.  
12 SENATOR DUTTON: I know your position --  
13 it's an at-pleasure position.  
14 MS. RIOS: I'm at retirement age. However,  
15 I have no plans for retirement.  
16 SENATOR DUTTON: Okay. All right.  
17 CHAIRMAN STEINBERG: Very good. Thank you,  
18 Senators.  
19 SENATOR AANESTAD: Your husband is smiling.  
20 CHAIRMAN STEINBERG: Can we hear from  
21 witnesses in support of the nominee? Are there any  
22 witnesses here in support?  
23 Please come right on up. Can you just  
24 identify yourself by name and your position of  
25 relevance and your reason for support.

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1 MR. GONZALES: I'm retired from Youth  
2 Authority.  
3 CHAIRMAN STEINBERG: Your name.  
4 MR. GONZALES: Richard Dino Gonzales. I'm  
5 state president for MACA, Mexican American  
6 Correctional Association.  
7 I'm here to endorse support of Rachel Rios  
8 100 percent in the position of director. Also, I  
9 might also add when the call came out for her to come  
10 to her duty, she took the chair and took in full  
11 responsibility.  
12 It's about time that the department has got  
13 somebody from within the ranks that knows what's  
14 going on. Everybody -- no offense that is -- has  
15 come from outside the department to fill these  
16 vacancies. Ms. Rios can do the job, and she has a  
17 lot of integrity.  
18 Thank you.  
19 CHAIRMAN STEINBERG: Thank you very much,  
20 sir, for testifying. We appreciate it.  
21 Any other witnesses in support? Briefly,  
22 please.  
23 MR. DOSICK: Yes, Senator.  
24 Mr. Chairman, Senators, my name is Scott  
25 Dosick. I represent the California Association of

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1 Local Conservation Corps.  
2 We're here in strong support of Ms. Rios.  
3 We were participants along with California YouthBuild  
4 Coalition and the challenge grant, found her  
5 incredibly supportive of everything that we were  
6 trying to do and can vouch for her commitment to  
7 reducing recidivism and rehabilitating the youth  
8 under her jurisdiction.  
9 CHAIRMAN STEINBERG: Thank you very much.  
10 Good testimony.  
11 Anybody else? Please.  
12 MS. REMINGTON: Chairman, Members, my name  
13 is Debora Remington, and I'm a personal friend of  
14 Rachel Rios. And I'm here today to witness this  
15 awesome event and to express my pride in my  
16 government since they would consider this awesome  
17 person for this position.  
18 As far as stick-to-itiveness, if she's going  
19 to be around, we've been friends for over 40 years,  
20 and she's always done what she loves, and she's  
21 always put her heart into it. You're never going to  
22 find anyone who can't give you information about her  
23 qualities about her work business, but on a personal  
24 level, she's a phenomenal human. Thank you.  
25 CHAIRMAN STEINBERG: Thank you very, very

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1 much. Sometimes that's some of the most meaningful  
2 and important testimony.  
3 MS. RIOS: Thank you.  
4 CHAIRMAN STEINBERG: Are there witnesses in  
5 opposition?  
6 SENATOR AANESTAD: Move.  
7 CHAIRMAN STEINBERG: Moved. Okay.  
8 I do want to make a comment here. Ms. Rios,  
9 I'm most impressed by the fact that you have worked  
10 your way up through the ranks, you know, as one of  
11 the witnesses testified to a moment ago, that you've  
12 worked with the Youth Authority for 23 years now.  
13 MS. RIOS: Twenty-five, over 25.  
14 CHAIRMAN STEINBERG: Twenty-five. Excuse  
15 me. Okay.  
16 MS. RIOS: Get my 25-year pin.  
17 CHAIRMAN STEINBERG: And that you have  
18 obviously succeeded by working hard and by  
19 understanding what it takes to help troubled youth.  
20 And, you know, your answers today were good, and  
21 there's no question that you appear qualified. I'm  
22 prepared to support your nomination.  
23 I do remain very concerned about the state  
24 of the department itself. And, you know, it's not  
25 just my opinion; but, I mean, the fact that the

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1 courts continue to say that this is a department that  
2 is not doing what it should do is of concern to all  
3 of us. And the only way to change that, in my view,  
4 is to be most serious about aggressive benchmarks and  
5 goals, and a strategy that shows that you're moving  
6 towards those benchmarks and goals over time.  
7 And I just want to say, you know, again,  
8 it's not all on you, but you are sitting here. And  
9 what I intend to do here -- I hope that we vote your  
10 nomination out, and it will be my intent to bring it  
11 to the floor and to also strongly support your  
12 nomination be voted out, but I'm not going to bring  
13 it to the floor until Senator Oropeza's question is  
14 answered by your higher-ups here.  
15 There needs to be an agreed-upon definition  
16 of reduced recidivism, and benchmarks, timetables,  
17 and goals for how you intend to reduce recidivism,  
18 period. If the rate is X now, we want to know what  
19 your goal is to reduce it by Y within Z number of  
20 years, and how you intend to get there, because  
21 without that as kind of the common framework, what is  
22 this system about?  
23 And so I know that you have until -- What  
24 date, Nettie? I'm not sure.  
25 SENATOR AANESTAD: June.

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1 SENATOR OROPEZA: June.  
2 CHAIRMAN STEINBERG: June the 16th, so we've  
3 got, I think, a fair amount of time here, over a  
4 month and a half, for you and the department to come  
5 forward with an easily understandable definition of  
6 recidivism, the current recidivism rate, what you  
7 intend to reduce it to, and how you intend to get  
8 there. And when we have that and it's a satisfactory  
9 document, we'll bring the nomination to the floor.  
10 Okay?  
11 I'm willing to vote it out today because  
12 you're qualified, and we want to move the process  
13 forward. Okay. Fair enough.  
14 SENATOR OROPEZA: Okay.  
15 CHAIRMAN STEINBERG: Moved by Senator  
16 Aanestad.  
17 Please call the roll.  
18 MS. BROWN: Senator Cedillo.  
19 SENATOR CEDILLO: Aye.  
20 MS. BROWN: Cedillo aye.  
21 Dutton.  
22 SENATOR DUTTON: Aye.  
23 MS. BROWN: Dutton aye.  
24 Oropeza.  
25 SENATOR OROPEZA: Aye.

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1 CHAIRMAN STEINBERG: Three through nine. Go  
2 ahead.  
3 SENATOR OROPEZA: Number ten is not a whole  
4 week. Number ten is not a whole week. It's the 20th  
5 through the 24th.  
6 CHAIRMAN STEINBERG: Three through nine.  
7 Please call the roll on three through nine,  
8 with six as amended.  
9 MS. BROWN: Senator Cedillo.  
10 SENATOR CEDILLO: Cedillo aye.  
11 MS. BROWN: Cedillo aye.  
12 Dutton.  
13 SENATOR DUTTON: Aye.  
14 MS. BROWN: Dutton aye.  
15 Oropeza.  
16 SENATOR OROPEZA: Aye.  
17 MS. BROWN: Oropeza aye.  
18 Aanestad.  
19 SENATOR AANESTAD: Aye.  
20 MS. BROWN: Aanestad aye.  
21 Steinberg.  
22 CHAIRMAN STEINBERG: Aye.  
23 MS. BROWN: Steinberg aye.  
24 CHAIRMAN STEINBERG: Okay.  
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1 MS. BROWN: Oropeza aye.  
2 Aanestad.  
3 SENATOR AANESTAD: Aye.  
4 MS. BROWN: Aanestad aye.  
5 Steinberg.  
6 CHAIRMAN STEINBERG: Aye.  
7 MS. BROWN: Steinberg aye.  
8 CHAIRMAN STEINBERG: The motion passes five  
9 to nothing. Congratulations. Thank you to your  
10 family, and thank you to all those who testified  
11 today. Appreciate it.  
12 MS. RIOS: Thank you.  
13 (Applause.)  
14 CHAIRMAN STEINBERG: Okay. Let us get  
15 through here. We have file items three through --  
16 three through ten. Are there any concerns or  
17 questions about any of the items three through ten?  
18 SENATOR CEDILLO: No.  
19 SENATOR DUTTON: Just have a question about  
20 six.  
21 CHAIRMAN STEINBERG: Okay.  
22 (Discussion off the record.)  
23 CHAIRMAN STEINBERG: We're taking up file  
24 items now three through ten.  
25 SENATOR DUTTON: I got to vote no on ten.

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1 (Thereupon, the Senate Rules Committee hearing  
2 adjourned at 3:05 p.m.)  
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2 I, INA C. LeBLANC, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify  
4 that I am a disinterested person herein; that the  
5 foregoing transcript of the Senate Rules Committee  
6 hearing was reported verbatim in shorthand by me,  
7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

0 I further certify that I am not of counsel or  
1 attorney for any of the parties to said hearing, nor in  
2 any way interested in the outcome of said hearing.

3 IN WITNESS WHEREOF, I have hereunto set my hand  
4 this \_\_\_\_ day of \_\_\_\_\_, 2009.

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8 INA C. LeBLANC  
9 CSR No. 6713

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1 APPENDIX  
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Senate Confirmation  
Rachel Rios, Director  
Division of Juvenile Parole Operations  
California Department of Corrections and Rehabilitation  
April 13, 2009

*Rachel Rios  
Responses*

**Goals**

1. ***Please provide us with a brief statement of goals. What do you hope to accomplish or what have you accomplished during your tenure? How will you measure your success?***

As Director of the Division of Juvenile Parole Operations (DJPO), my primary mission is to provide opportunities that will enable the Division of Juvenile Justice (DJJ) youth to transition into their communities as productive members of society. In order to accomplish this, my goals are to implement an enhanced continuum of juvenile parole services that begins in the community at Intake and follows the youth through their detention and then back into the community. This enhanced parole continuum will involve increased collaborations with local juvenile justice partners, victim groups, community based organizations, and public safety agencies. It will require that we engage families, work closer with the youth during their detention, identify risk and need factors prior to community release and provide the appropriate evidenced based interventions to meet the youth's needs and maintain public safety.

The six major areas that I have identified as needing to be addressed in order to effectively implement the parole continuum include:

- Increasing collaborations and partnerships
- Quality and effective services
- Increased public safety
- Fiscal accountability and efficiencies
- Increased technological opportunities
- Staff development

By effectively implementing the enhanced parole continuum, the DJPO will be working collectively with the Division of Juvenile Facilities and the Division of Juvenile Programs to meet the mandates in the *Farrell* and *LH* litigations.

Much work has already begun towards implementing these goals including meetings with parole staff to share the parole continuum vision. Other areas that have also been accomplished during my tenure include:

- Full implementation of the remedial efforts under the *LH* litigation (development of policies, procedures, and training)
- Implementing and expanding the second year of the AmeriCorps Restoring Youth and Communities Program
- Development of an enhanced parole continuum model – including introduction of the six phases of parole

**Senate Rules Committee**

APR 13 2009

**Appointments**



- Implementation of the Challenge Grant Re-entry program including coordinating the interim report on the programs progress
- Development of the Community Assessment Report (CAR), with implementation scheduled for June 2009
- Introduction of Succession Planning to Parole Branch Cabinet and scheduled rollout for parole supervisors in May 2009
- Fiscal reconciliation of all positions
- Introduction of the Parole Service Associate (PSA) classification to DJPO
- Coordination of a Workload Study methodology to guide parole in future staffing models
- Establishment of an Information Technology committee to improve DJPO's current Field Information System (FIS) and Youthful Offender Data Accountability (YODA) systems
- Reconciliation and accountability for sex offender registration
- Establishment of a workgroup to review and update all of DJJ parole policies

These efforts will be measured through various remedial plans, corrective action plans, accountability tools, COMPSTAT reports, but more importantly through the increased level and expertise of services that DJPO staff provide to youth and the increased successful reintegration of youth to the community.

**2. *Your position was vacant from July 2005 until your appointment in June, 2008. How do you evaluate the effectiveness of the parole structure you inherited? Are improvements needed? If so, in what areas?***

During the period of time that the Director position for DJJ Parole was vacant, a number of very committed individuals stepped forward to fill the position as acting Director. The fact that there were four or five people in those three years means that, although they may have had DJJ Parole's interest at heart, the lack of continuity created a challenge in the advancement of parole's efforts towards reform.

In that area, I think that parole is a little further behind than the rest of the DJJ in its effort to incorporate all of the reform measures. However, a foundation has been set and parole is moving toward incorporating many of the elements that were required in the remedial plans. Some of these requirements are familiar to parole which will allow for easier incorporation into the existing structures.

In addition to the Director position being vacant, there have been numerous retirements leaving several gaps in the parole management team, that are being filled to strengthen the ability to implement and monitor the enhanced parole model.

I have identified six areas that are critical to our operation and where improvements are needed and have begun to address each. These areas include increasing collaborations and partnerships, quality and effective services, increased public safety, fiscal accountability/efficiencies, increased technological opportunities and increased staff development.

3. ***Is it the responsibility of you and your division to locate parole placements for wards? How many staff are available for this effort? How do you balance the need to supervise parolees with the need to locate additional placements?***

Yes, every parole agent has the responsibility to assist the youth assigned to them in locating placement or other support services. There are two Transition Coordinators, one at each region, that are available to assist with the more difficult to place youth, such as sex offenders. Additionally, Parole has recently established Parole Service Associates (PSA) at each parole unit. The primary responsibility for these positions will be to develop resources for parolees including placements and other alternatives to incarceration opportunities. The introduction of these positions was an effort to address the need to balance the parole agent's supervision responsibilities with their placement/support service development responsibilities. The increased use of Transition Coordinators and PSAs will allow parole agents to monitor and supervise youth at more intensive levels.

### **Background**

*The 2005 reorganization of the Department of Corrections and Rehabilitation created the Division of Juvenile Justice (DJJ). The number of juvenile offenders being sent to state facilities has dropped sharply over the past decade, with the population in state juvenile facilities declining from 10,000 a decade ago to a projected 1,700 by June 30, 2009. The number of juvenile parolees is almost 2,100, and their average age is 21. They are supervised by about 90 agents in 12 field offices. The cost to operate the juvenile parole system last year was around \$30 million.*

*The most recent drop in DJJ population is due to the passage of SB 81 (Senate Budget and Fiscal Review Committee), Chapter 175, Statutes of 2007, under which nonviolent and nonserious offenders are remaining at the local level. At least two juvenile facilities, DeWitt Nelson Youth Correctional Facility in Stockton and El Paso de Robles Youth Correctional Facility in Paso Robles, have closed. Meantime, DJJ recently completed youth assessment screenings for all offenders in institutions and a portion of the parole population. These are intended to better help provide services to the youth remaining in facilities who tend to be heavily gang involved, and better services on parole. But like all state departments, DJJ Parole must deal with furloughing of workers.*



**4. How is DJJ parole coping with the budget crisis? Have you had to curtail certain parole efforts due to lack of funds? If so, please explain. How has that translated into your ability to oversee juvenile parolees?**

The state's fiscal situation has had an impact on all of the California Department of Corrections and Rehabilitation (CDCR), including DJJ Parole. All parole units have done their share to reduce costs. Although the budget crisis has curtailed our ability to do some projects, significant effort has been made to ensure that direct services to parolees would not be diminished.

As a new Director, the fiscal challenges served as a good opportunity for me to familiarize myself quickly with the fiscal situation of my Division. It created an opportunity to look at strategies that could improve efficiencies and still provide quality services. Areas such as travel, purchasing and even filling of positions are reviewed carefully and tied to a specific need.

Parole Region staff have undertaken an effort to evaluate all "out of home" placements to determine the level of service received from providers and to develop costing ranges that will provide consistent funding across both regions. This analysis will be done for all service areas as well as an exploration of vendors who can provide wrap-around services. Additionally, in an effort to ensure that the needs of parolees continue to be met, collaborations with our partners have become essential. A great example of this involves the utilization of DJJ facility pharmacies to fill costly prescriptions for mentally ill parolees who transition to parole. DJJ Mental Health leadership has been very amenable to assisting Parole while we develop a community pharmacy contract. Overall, while the fiscal situation has been challenging, it has been a good opportunity to evaluate our Division and direct our resources more appropriately.

**Reform**

*Bernard Warner, Chief Deputy Secretary, Division of Juvenile Justice, previously committed the division to implementing Performance-Based Standards, a nationally recognized performance management system. He said it has 105 outcome measures for correctional facilities. This system allows California to compare itself to other states.*

**5. What is the status of the implementation? What do any juvenile parole results indicate about how California measures up against other states?**

The 105 outcome measures outlined in the Performance-Based Standards are for the correctional facilities and do not include parole. The Council of Juvenile Correctional Administrators (CJCA) has indicated that they may be developing outcome measures for aftercare programs and when that occurs, DJJ Parole will be included.



DJJ Parole does currently collect information on a quarterly basis and is reported through the Department's management branch as part of the COMPSTAT reporting. While the information is internal and not reported as Performance-Based Standards, these statistics provide valuable information on the status of parolee programs and future releases and returns. The information enables DJJ Parole to evaluate and plan for upcoming needs and/or trends and adjust programming as needed.

The information currently collected includes, per capita for parolees, number of parolees in treatment programs, number of parolees employed or enrolled in school, number of violations and number of parolees returned to a DJJ facility.

*An expert witness in the L.H. federal case observed in a report filed with the court in February of 2008 that the parole supervision and service operation tends "to feed parolees continuously through a revolving door of revocation, added time, and rereleases on parole, until (in many cases) the cycle ends due to the exhaustion of the parolee's confinement time and/or jurisdiction." The expert went on to say that, until and unless parole services are upgraded, offenders "will continue to be trapped in this cycle of failure, and the Division of Juvenile Justice will be unable to meet its statutory mission of protecting the public by providing treatment, training and rehabilitation to youthful offenders."*

**6. Please describe your reaction to these observations and describe what reform efforts parole is undertaking.**

DJJ Parole is dedicated to assisting youthful offenders in their transition to the community, while protecting the public's interest. We do this by establishing relationships with local entities, including law enforcement partners, community-based organizations and other service providers. Our objective is not to revoke a youth's parole, but to provide them all the opportunities to help them become productive members of their communities. Many of the youth being released from DJJ facilities have multiple challenges and histories of violence. Parole staff work with each youth to develop a case plan upon release for their successful transition.

The challenge that DJJ Parole often faces is having appropriate alternatives to deal with parolee violation behavior. Appropriate interventions that are inline with the level and seriousness of the violation behavior are essential. Revocation and incarceration should be the last alternative and reserved for those youth that pose a danger to themselves, others or at risk to flee appropriate supervision.

As part of the settlement in the *LH* lawsuit, DJJ agreed to consider alternatives to revocation at every level of the parole violation process. Additionally, minor violations of parole and moderate technical parole violation behavior that does not warrant detention has been deferred to the parole units for disposition, as opposed to being reported to

the Juvenile Parole Board (JPB). A key element in applying the provisions of the *LH* settlement and in addressing the comments above will be the successful implementation of the PSA at each parole unit. The PSA's charge is to develop a community resource guide of support services. Additionally, as previously stated, the PSA's will be tasked with locating placement options and treatment programs that can be utilized as alternatives to revocation.

With appropriate alternative sanctions, we are confident that many youth's behavior can be addressed in a community setting and that only those youth that pose a danger to the community will be returned to detention.

In the area of reform efforts, DJJ Parole is in the process of implementing an enhanced continuum of care model that is consistent with the Integrated Behavior Treatment Model (IBTM) which is integral to the *Farrell* reform efforts. The enhanced parole model involves the six phases of parole and is attached for your review (Attachment).

The first three phases occur while the youth is still detained and demonstrate our recognition of the need for parole's involvement at every phase of youth's treatment program. Phase one involves the youth at the point of commitment. Currently, as part of the *Farrell* Safety and Welfare Remedial Plan, DJJ is required to provide orientation to newly committed youth while they are detained in Juvenile Hall. This effort is being accomplished by DJJ's Intake and Court Staff. Parole will be partnering with these staff to gain valuable insight from the youth regarding family and community history for the preparation of the CAR. The CAR will also involve interviews with the family and any other relevant sources to provide facility staff with a better insight into the youth's needs. This will also be the first opportunity to engage the family in the youth's treatment and case plan. The second phase occurs throughout the youth's detention and involves periodic involvement by the field parole agent into case staffing or annual reviews. These are also opportunities to include the family via the video conference to these important events. The third phase occurs between six months to one year prior to the youth's projected board release date. This is the transition planning phase. Community connections, placement options, service needs and any other issue that could impact a youth's successful reintegration will be addressed at this phase.

Phase four is the initial release phase and will require intensive level of supervision and support from parole staff. This phase will also require parole staff to work closely with the family to keep the youth focused and directed toward meeting their goals. Phase five is the stabilization phase and involves parole helping the youth and their families develop their own support systems. Phase six is the preparation for discharge phase. During this phase, youth review their goals and support systems and are evaluated for discharge from parole.

DJJ parolees do not progress in a linear fashion and therefore this model allows a youth to move in and out of phases four and five as their situation dictates. A youth who is



progressing well can continue moving through the continuum and be considered for discharge within 18 months depending on their risk level. A youth who is struggling to avoid delinquent or criminal activity may require longer supervision levels.

This model is based on responding to a youth's needs and will encompass all of DJJ working together toward meeting these needs.

*In 2004 the Administration reached a landmark settlement in the Farrell lawsuit on the conditions of confinement in juvenile facilities. DJJ is supposed to implement a broad array of reforms, including creating smaller living units, improving education and mental health services, and bolstering safety.*

*In February 2008, however, lawyers representing juveniles urged a judge to name a receiver to run the system they said remained broken. And last October an Alameda County judge stated the state was "in gross violation" of court orders by taking too long to reform its juvenile prison system. But he delayed appointment of a receiver to allow your division time to speed up improvements. You have indicated that Parole has a role in the Farrell litigation. You have said that Parole is to complete a community assessment report for all incoming cases, which involves interviewing the family to provide the facility more information on the youth and their support systems. Parole is also charged with assisting in engaging the family to take a greater role in the youth's case plan and progress while in the facility.*

**7. How do you evaluate the efforts parole has made to engage families in taking a greater role in case plans of juvenile offenders?**

The return of the CAR for all newly accepted youth into DJJ will begin in June 2009. The CAR will be the initial opportunity for parole staff to begin engaging the family into the youth's facility case plan.

Parole agents currently work with family members of parolees in their overall supervision of these youth. Some parole offices allow family members to attend support groups or educational opportunities with the parolees. These efforts need to be encouraged more often and at an earlier stage, which will be included in the enhanced parole continuum. The aftercare case plan will need to incorporate strategies for including the family.

Currently, parole offices have been equipped with video conferencing capabilities which have begun to be used for the purposes of engaging families to participate in the youths' case plan while the youth are in a DJJ facility. Families that have been unable to visit a youth have gone to the parole unit to participate in a video conference with their youth at the facility. The use of video conferencing and parole's involvement with



families throughout a youth's detention will continue to increase and is an integral part of the enhanced parole model.

Parole staff have been attending training on Motivational Interviewing to assist them in techniques to better engage and interact with families. Additionally, DJJ is in the process of implementing a training module with the Family Justice Institute, which will provide additional training opportunities for parole staff to learn about family engagement. We anticipate this training occurring before the end of this fiscal year.

### **Transition Services**

*Three years ago, a panel of experts recruited by the department sketched out plans the division was making for transition and aftercare. Under this concept, prerelease planning was to begin upon the arrival of the offender at a reception facility and continue throughout the ward's stay in DJJ. Among other things, a community assessment report would include interviews with parents and other relatives who could provide significant background information about the offender. DJJ recently completed youth assessment screenings for all offenders in institutions and a portion of the parole population. These are intended to better help provide services to the youth while in facilities and on parole.*

- 8. What progress have you made toward the goal laid out by the experts regarding transition and aftercare? What has been successful and why? Are your assessment screenings following the model laid out by the expert panel? What have been the barriers to meeting your goals?**

The enhanced parole model described previously demonstrates the recognized importance of the transition phase. DJJ Parole has not fully implemented this model and anticipates that we will begin using the assessment screening tool, Youth Assessment and Screening Instrument, (YASI) for parole case planning in July 2009. However, in 2006, the DJJ Parole Division was given an opportunity to provide transition services through the Community Re-entry Challenge Grant. This funding was designed to identify programs in the community that could provide pre-assessments for detained youth and assist them in their transition to the community. A competitive application process took place and five programs were funded statewide. The draft interim report on their progress shows some promising results with the identification of challenges that need to be addressed for better outcomes in the future.

Through this particular effort, each program completed an assessment of the youth to identify the youth's needs and then developed case plans to address them upon their release. Those programs that were able to engage the youth immediately upon release to parole and provide them with employment as well as the needed support services were the most successful. At this point, it appears that programs that spent more time

with a youth while they were detained, but took longer to engage them in employment once released to parole were not as successful as those that were not able to engage the youth quickly. The key finding appears to be the immediacy in which a youth can be connected to a productive, employment-related activity.

The Challenge Grants were funded for three years; however, delays in the application and contracting process prohibited most programs from beginning services until 2007. Therefore, the interim report really only reflects the services in the first year. The final report is due in 2011. An extension to roll over the remaining funds into another year is being explored.

The AmeriCorps Restoring Youth and Communities Program is another effort that DJPO has made towards providing transitional services. Through this program, 50 percent of the AmeriCorps members hired are successfully discharged DJJ parolees. The program concept is to provide DJJ youth in facilities and parole with a mentor that will assist them upon their release and transition to the community and provide them with service learning opportunities. As full-time "service-learning coaches," the AmeriCorps members work as counselors and mentors alongside youth inside DJJ facilities or on parole, helping them re-connect to their communities. That effort includes helping individuals cope with drug abuse, gang pressures or violent behavior, and teaming up with them to create projects with local public service organizations to make a positive contribution to the community.

While these opportunities show promising results, the incorporation of a consistent assessment tool for case planning, implementation of the continuum of care model, continued resources and identified benchmarks is still needed.

- 9. *How do you use the assessment tool in determining where to place a parolee? If the assessment suggests a parolee cannot return to live with his or her parents, what are your options for placement? What sort of options do you provide for a foster youth who is paroling? If you have few options, what steps is DJJ taking to help establish more alternatives for the offenders who cannot return to their family homes, no matter the reason?***

Currently, DJJ facilities are utilizing the YASI assessment tool, and parole participated in these assessments to "norm" the tool. Prior to a youth's release from a DJJ facility, the treatment team develops a request for placement report that provides parole with information regarding the youth's needs including placement options.

DJJ Parole Agents do a site visit of the placements suggested by the treatment team, interview family members to determine if the family is willing to take the youth in and determine if this will be an appropriate placement. Often times the youth returning home are older and family may not be able to take them back in or they do not have



families to return to. In those situations, Parole looks for alternative placement options. Group homes or foster care placements are evaluated depending on the youth's particular need.

Each parole unit works to develop several options which may include residential treatment programs, small group homes, or independent living situations.

DJJ Parole has recently begun doing an analysis of the number of beds available statewide for youth and a needs assessment of how many youth could be better served in alternative placements. This gap analysis will serve as our basis for developing goals and strategies to obtain the appropriate services.

As the enhanced parole model is implemented, the assessments and case plan from the facility will be modified during the transition phase to be community focused and parole will continue with the regular reassessments to identify a youth's continued needs.

***10. What role do parole agents play in creating a transition plan or assisting in finding aftercare for an offender?***

As previously mentioned, parole staff play a vital role in developing the transition aftercare plan for each youth being released. In the enhanced parole model, parole staff will be working with facility and treatment staff from the point of commitment and throughout the youth's detention phase to develop the most appropriate release and aftercare plan. The same assessment tools will be utilized and the facility case plan will be incorporated into the community plan to ensure that the appropriate interventions continue to meet the youth's needs.

***11. If a youthful offender violates parole, do you have an adequate array of options? What more would you like to see available? Please provide data on violators returned to a locked facility or given intermediate sanctions.***

Parole violation behavior has been defined in three levels. Level 1 violation behavior involves minor rule violations and violations of technical parole conditions. Level 2 violation behavior involves moderate parole violations including minor law violations. Level 3 violation behavior involves serious parole or law violations and any behavior that is required to be reported to the JPB.

Less serious behavior issues are addressed at the unit level and may not require additional interventions. However, the options currently available to parole for moderate and serious violations (that don't warrant detention), are limited. These behaviors require some form of intervention by the parole agent short of a revocation of a youth's parole. The lack of alternatives had sometime led parole staff to utilize temporary



detention as a sanction to get the youth back on track with their case plan. The use of temporary detention is no longer allowed under the *LH* stipulated agreement. Therefore, parole is challenged with finding other suitable options short of revoking a youth's parole.

In the last quarter of COMPSTAT reporting, 46 percent (52) of the 112 youth whose parole was revoked involved technical parole violations. While this number was prior to the *LH* implementation, it still indicates a greater need for alternatives. The encouraging news is that the last quarter COMPSTAT report also reflects a greater number of youth being continued on parole for violation behavior. A total of 194 youth were continued on parole, which is 63 percent of all youth involved in violation behavior for that period. These numbers were prior to the *LH* full implementation which began in February 2009, and are expected to show a decreased number of youth returned to custody. The PSAs discussed in previous responses will play an important role in locating an array of options available to agents.

As DJPO gears up to deal with locating appropriate alternative to revocation programs, a short term community violator program could address this service gap. Such programs existed before and while our parole population has declined, similar programs on a smaller scale level have merit and are being explored.

**12. *You have said that most sex offenders participate in either group or individual counseling at parole offices. Are these counseling sessions adequate? What more needs to be done?***

Currently, all parole offices provide individual or group sex offender counseling at either the parole units or at a vendor's site. In the Southern Region, the service provider is under one contract and therefore the services are consistent. The Northern Region has various vendors. Our Regional Transition coordinator indicates that the services being provided by these contract vendors appear to be adequate, but that additional services for the sex offender population should be considered, particularly wrap around services that include placement options. Housing is often difficult to obtain due to various registration laws; however, these youth are generally in the greatest need for this service.

Much more attention needs to be given to juvenile sex behavior treatment. DJPO is working with the reform team to identify the modalities being developed as part of the *Farrell* remedial plan to ensure that adequate aftercare components are part of the youth's continuum of treatment.

DJJ Senior Psychologist Supervisor and Coordinator for Sexual Behavior Treatment Programs indicates that recent literature reviews show that juvenile sex offenders re-offend at a rate of 6 to 8 percent and therefore previous treatment modalities are being reconsidered. Individualized services may become the preferred method of

treatment for this population. As these findings are developed, parole will need to modify its service delivery options to be responsive.

Other areas that require additional attention in relation to sex offending youth, include determining the appropriate assessments, (Static-99/J-SORRAT), developing appropriate monitoring and supervision standards, adequately training staff on new treatment modalities and on accountability requirements and greater collaboration with facility sex behavior program staff for smoother aftercare transitions.

As Director of Parole, I have recently been invited to participate in the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) committee, DJJ Parole's involvement will assist in ensuring that we identify and meet the needs of this population while adequately protecting the public.

***13. Please describe your services for offenders transitioning from institutions to parole. What are the most significant roadblocks to improving transition services for youthful parolees? For those offenders who struggle to read, what type of basic parole literacy programs can you place them in? How would you evaluate these efforts?***

DJJ Parole currently provides a variety of programs and services to parolees. These services are provided at parole units statewide or through community collaborative relationships and/or through contract vendors. Services include education, employment services, vocational training, counseling services (mental health and sex offender), substance abuse counseling, and housing placement services.

The draft interim report on the Challenge Re-entry Transitional grant (mentioned earlier) indicates that the one of most significant factors to transition services appears to be the immediacy of delivery. With that in mind, some of the roadblocks that parole experiences include delays in getting the youth ready to seek employment. Lack of a California identification card or a birth certificate can create long delays which impact our ability to keep the youth engaged. Through the enhanced parole model and the IBTM these issues are being addressed and opportunities to have youth parole with this information will greatly assist in quickly engaging them in the community.

Parole units rely on community based organizations to refer youth to literacy programs and are looking for ways to expand their inclusion into current educational programs offered at the parole units. Education services are often provided at the parole units in classrooms operated by County Offices of Education. DJJ's Education Division operates one parole school at the Sacramento Parole office. The educational programs generally provide high school diplomas or GED programs and offer special education services

In southern California all of the parole units are serviced by the Franklin Outreach Program which is funded by the Orange County Office of Education. In offices where a



classroom or teacher is not available, DJJ parolees are connected with community or local educational services. In Bakersfield, educational services are provided by WESTTEC Vocational Training Program which works in conjunction with Taft Jr. College. This particular program offers services to probation youth and adult paroled youth at the DJJ parole unit.

### **Gender Specific Issues**

*Under legislative changes, the state is providing block grants to counties to offset the costs of juvenile offenders. The state also has discussed moving about 80 young women and girls from the partially occupied Ventura Youth Correctional Facility, the only such state institution to incarcerate girls and young women.*

- 14. Are there gender-specific services available for female parolees? If not, what is being done to ensure female parolees receive community treatment designed for females? If the young women and girls are eventually moved into a private facility, as has been discussed, how will that affect their transition to parole?**

Traditionally, this population has been difficult to service because the small numbers make it difficult to identify specific contract vendors throughout the state. However, DJPO staff recognize the importance of providing gender-specific services and collaborate with available resources in the community or contract for services to meet the needs of this population. In Southern California one of the Challenge Grant recipients, offers gender specific programs and we have been able to refer our female population to this resource.

Parole units that have a higher number of female parolees have created resources such as "Women Only Group," a female parolee group in Watts that focuses on empowering female offenders and providing them support services including housing, counseling and free legal assistance. Most parole units assign female offenders to parole agent Specialists' caseloads so that additional resource development and services can be provided. Parole units provide services to this population by locating community resources or contracting with area vendors.

Other examples of resources available to this population include residential transitional living programs that offer independent living skills development, and contracting for recovering services unique to female offenders that allow them to bring their children with them if needed. Parole units also offer mental health services through contract vendors on site and can locate in-patient services for youth in the community.



Should the female population be transitioned from DJJ to a private facility, DJPO will develop collaborations with those entities to ensure that the appropriate transition services are still provided.

### **Staffing and Training**

*Over time, the national experts who studied the division said the juvenile system has come to reflect a miniature version of the adult prison world. Without the capacity to manage reform, they said, needed changes will not occur in organizational structure and appropriate management culture*

**15. To better inform their decisions, how do you inform members of the Juvenile Parole Board on the type of placements available for youthful offenders?**

The DJPO and the JPB have a very good relationship and communicate areas of concern readily. As new Board members have been appointed, the JPB Executive Officer has requested that parole staff meet with them. These meetings provide the Board members an orientation, and the opportunity for Paroles to discuss with the members the programs and services that are available to youth on parole.

The Board members conduct annual reviews and discharges at the various parole units, which also affords them the opportunity to meet and discuss with each parole supervisor and agent the programs that are available in their units.

In addition, the resource directory that the PSAs in each parole unit are developing will be shared with facility and board staff regularly.

I regularly attend the parole board meetings to maintain an open dialog with the board. Additionally, Parole is represented on the JPB's Parole Release Policy work group to assist with incorporating and addressing placement issues within the JPB's release policy.

**16. Have you acted since your arrival to ensure that parole employees in juvenile justice institutions and parole offices around the state have access to you? If so, how? Please explain how you have improved the training of agents. What more needs to be done?**

Having had prior experience working within the DJJ Parole Division, I was fortunate to have previously met many of the parole staff, and was given a warm welcome upon my arrival.

I initially met with headquarter staff, region staff and attended the supervising parole agent meetings to meet with all unit supervisors. During the parole agent refresher training, I attended each of the four sessions (both north and south) to meet with all parole agents and give them the opportunity to share their concerns, their needs and their interests. Additionally, during the rollout of the *LH* training I was available to kick off each session and to answer questions regarding the *LH* lawsuit, the new violation process and any other areas of concern. The last day of the training was reserved for supervisors and I utilized this opportunity to return and meet with them.

Support staff is a vital element in parole's work, yet can sometimes be overlooked. A joint training session (north and south) for support staff was recently held. I opened up this training by giving support staff an opportunity to share their concerns with me and offer suggestions for better communication.

Visiting the various parole offices has given me a better assessment of each of the units and has allowed me to on occasion meet with local service providers. I have also attended various unit events.

In addition to meeting with staff within DJJ Parole, I have attended Superintendents' meetings, JPB meetings and I have met with DJJ Mental Health Administrators. I have used these opportunities to discuss areas of mutual concern.

With regard to improving training for staff, we have incorporated into the parole refresher training, the findings from the parole unit audits in order to ensure appropriate compliance with the corrective action plans. We have also required parole agents to participate in all of the reform trainings being offered to facility staff. To enhance knowledge, skills and abilities at the unit level, the Regions are forming collaborative apprehension partnerships with each other and will begin providing enhanced quarterly training during their next firearms qualifications. We have also been working with the training center to ensure that appropriate curriculum is established for the parole academy and the Parole Refresher series.

While I believe these are good efforts, additional training is needed to work with sex offenders; offenders with co-occurring disorders; gang entrenched youth; as well as teaching staff to work as collaborative partners and, finally, training to increase staff development.

# PROPOSED DJJ PAROLE CONTINUUM OF CARE \*

1	2	3	4	5	6
<p>Community Assessment &amp; Classification 3 months</p> <p><i>Commitment</i></p> <p>Parole Services Role Involving Linkage with:</p> <ul style="list-style-type: none"> <li>- facility</li> <li>- family</li> <li>- ward</li> <li>- community agencies and organizations</li> </ul>	<p>Facility Programming (Extended Treatment) Duration based on length of Stay Decisions</p> <p>Based upon classification and Program Assignment</p> <p>Parole Services Role Involving Linkage with:</p> <ul style="list-style-type: none"> <li>- Facility Treatment Staff</li> <li>- Ward</li> <li>- Family</li> <li>- Community agencies (contact at designated points in time)</li> </ul>	<p>Facility Transition (Reentry Planning) 6 months</p> <ul style="list-style-type: none"> <li>- Intensive preparation for release into community</li> <li>- Programming activities to address street readiness for wards</li> <li>- Pre-release conferencing</li> </ul> <p>Parole Services Role Involving Linkage with:</p> <ul style="list-style-type: none"> <li>- Facility Treatment Staff</li> <li>- Ward</li> <li>- Family</li> <li>- Community Agencies and Organizations</li> </ul>	<p>Community Transition (Step-down and Linkage) 3-6 months</p> <ul style="list-style-type: none"> <li>- Initiation of parole plan developed jointly with facility and parole staff</li> <li>- Linkage with indicated services and resources</li> <li>- Intensive phase of supervision of parolees</li> </ul> <p>Parole Services Role Involving Linkage with:</p> <ul style="list-style-type: none"> <li>- parolee</li> <li>- family</li> <li>- significant others in social network</li> <li>- community agencies and organizations</li> </ul>	<p>Extended Delivery of Aftercare Services 6-18 months</p> <ul style="list-style-type: none"> <li>- Continuing activities by parole to stabilize and fully reintegrate the parolee</li> <li>- Process of decompression of supervision based upon scheduled re-assessments</li> </ul> <p>Parole Services Role Involving Continued Linkage</p> <ul style="list-style-type: none"> <li>- with key community individuals and agencies</li> </ul>	<p>Planning and Preparation for Discharge 3-6 months</p> <ul style="list-style-type: none"> <li>- Steps to demonstrate readiness of parole to function normally in the community</li> </ul> <p>Parole Services Role Involving Continued Linkage</p> <ul style="list-style-type: none"> <li>- Final check on parolee's readiness for normal living</li> </ul> <p><i>Discharge</i></p>



CALIFORNIA LEGISLATURE

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SENATE RULES COMMITTEE

DARRELL STEINBERG

CHAIRMAN

April 2, 2009

Craig S. Daley

Craig Daley  
Responses  
Bldg. Standards Comm.

Dear Mr. Daley:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Building Standards Commission (BSC) on April 29, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by April 21, 2009.

We would also like to receive an updated Form 700, Statement of Economic Interest, by April 21<sup>st</sup>.

**Accomplishments and Goals**

The BSC is responsible for administering California's building codes, including adopting, approving, publishing and implementing codes and standards.

1. *What do you believe you have accomplished as a member of BSC?*
2. *What are your future goals as a member of this commission? How will you measure your success? What challenges do you anticipate in meeting these goals?*
3. *As a member of BSC, how do you balance your role as a member in the construction industry slot with the need to represent all Californians when deliberating policy decisions?*
4. *What do you believe are the most pressing issues facing BSC?*

5. *What efforts has BSC made to encourage high school and/or college students to consider jobs in the construction industry?*
6. *What ethics training have you received to prepare you for your duties? How have you been trained to recognize conflict of interest? Have you ever recused yourself from a vote?*

## **Green Building Standards**

In 2008, BSC adopted the California Green Building Standards Code intended to cut energy and water usage to help the state meet its goals to curb greenhouse gas emissions. The standards are optional. Some critics argue that optional regulations eliminate the incentive to comply with more stringent standards which, in turn, may reduce opportunities to maximize environmental and health benefits. Under the optional standards, there are no minimum requirements; therefore, buildings could be constructed with one of the proposed options and be called a green building in accordance with California regulations.

The commission has stated that it will continue to work with stakeholders to develop a comprehensive set of mandatory provisions in the 2010 edition of the California Green Building Standards Code.

7. *What progress has been made to develop these mandatory provisions?*
8. *What changes to the green building standards would you like to see implemented?*

Concern has been raised that the Green Building Standards Code could be interpreted to preempt more stringent local ordinances. Environmental groups have called for clearer language in the state building code that would allow cities and counties to enact more stringent standards. Assembly Bill 2939 (Hancock) of 2008 attempted to expressly authorize a city, county, or city and county to implement stricter green building guidelines than those otherwise permitted under existing law, but it was vetoed by the Governor.

Governor Schwarzenegger vetoed the bill stating that it was overly broad. However, the Governor encouraged future legislation that would provide the "absolute clarity that local governments can strengthen the state's green building standards, while maintaining California's rigorous uniform statewide health and safety standards."

9. *Do you believe the green building standards prevent "greener" standards at the local level? If not, what efforts have you made to educate local agencies regarding their authority to adopt stricter standards?*

## **Building Standards for Deep Floodplains**

Senate Bill 5 (Machado), Chapter 364, Statutes of 2007, requires the Department of Water Resources (DWR) to propose building standards for deep floodplains for BSC to adopt and approve. The proposed regulations will update the Building Standards Code for construction in areas protected by facilities of the Central Valley Flood Protection Plan, where flood levels are anticipated to exceed three feet for a 200-year flood event. DWR is scheduled to submit the proposed standards on or before July 1, 2009.

10. *What is the anticipated time frame for BSC to review and approve this proposal?*
11. *What factors will you consider when this proposal comes before BSC for adoption and approval?*

## **Public Access to Government**

BCS is subject to the Bagley-Keene Open Meeting Act and required to conduct its business in a manner that allows the public to monitor and take part in the commission's decision-making process.

Access to meeting agendas, minutes, and meeting materials are essential to allowing the public to monitor the actions of government entities like BCS. The commission's Web site is a primary source of information for the public. While the commission posts its meeting agendas and minutes on its Web site, meeting materials are not available. With regard to the commission's coordinating council and committees, which do much of the commission's work, neither the minutes nor meeting materials are available online.

Additionally, the BSC meeting information telephone line at (916) 263-0844 reported that the next BSC meeting was scheduled for September 13, 2006.

12. *Please explain what is being done to improve the commission's current outreach and public access efforts?*
13. *Has BSC considered posting its meeting materials online? If so, what is the time frame for the posting? If not, please explain.*



### **Economic Impact on BSC Operations**

The state of California has experienced an unprecedented budget crisis and shortage of cash. It has affected every aspect of state government.

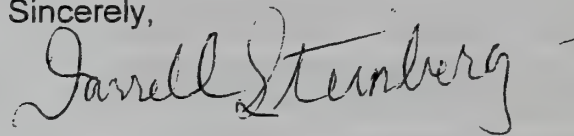
On July 31, 2008, the Governor issued Executive Order S-09-08, which mandates state agencies implement a hiring freeze, eliminate overtime, terminate all temporary employees, and suspend all personal services contracts.

14. *What do these actions mean for BSC? Given the staff cuts and restrictions on personal services contracts, how will BSC ensure it is able to meet the needs of its constituents in a timely and efficient manner?*
15. *How does BSC prioritize its responsibilities, particularly given current budgetary realities?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

A handwritten signature in cursive script that reads "Darrell Steinberg". The signature is written in dark ink and is positioned above the printed name.

DARRELL STEINBERG

DS:TS

Craig S. Daley  
Responses

**Senate Rules Committee**

c/o Nettie Sabelhaus  
Appointment Director, Room 420, State Capitol  
Sacramento, CA 95814

**Senate Rules Committee**

APR 20 2009

Date: 4/9/09

**Appointments**

Attn: Darrell Steinberg, Chairman

Re: Confirmation Hearings for Building Standards Commission  
Craig Daley, Commissioner

Mr. Steinberg,

Please find my responses to the 15 questions dated 4/2/09 below:

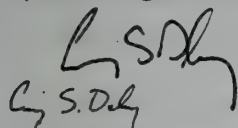
- 1) **Accomplished as member of BSC:** During this first year on the Commission I have spent many hours reading and learning background materials so I could come up to speed quickly and be on top of current issues coming before us. Most notably I am proud to have been a part of the passing of our new Green Standards and approving the use of PEX pipe.
- 2) **Future goals, measuring and challenges:** My goals are to use my extensive knowledge of construction and the building process to assist the Commission in working towards its goal of providing clear and rational building codes that set a high standard for construction in California. Measuring our success will come in the form of feedback from the public, the contracting community, building officials and our state building organizations. Further measuring will be from the number of local jurisdictions that see a need to develop their own codes perhaps indicating issues the Commission has not properly addressed. My challenge will be to evaluate code proposals that come before us for impacts they have on the building process in light of the current economic climate and our desire to have the best buildings in the country. Weighing cost impacts vs the desired code improvements is something I feel qualified to do.
- 3) **Balancing my role:** For the last 20 plus years I have been a trustee on various boards, on numerous committees and have learned how to 'wear the right hat' when making a decision. I am a California Contractor, but hold no allegiance that would bias my decision making. I fully understand my role as a contractor member of the Commission representing the greater good of Californian's and our buildings.
- 4) **Pressing issues:** Our most pressing issue is setting standards that help California achieve progressive and reasonable green codes that are widely supported and clearly defined. Current

voluntary green standards are the first step in a planned process to mandatory green standards that California needs for the better future of all.

- 5) **Encouraging students towards construction jobs:** I am not aware of specific outreach programs; however the Commission does its best to show the public construction is an upstanding part of our society. With our open meetings and webcast students can see our work in action.
- 6) **Ethics training:** I have successfully completed the *Ethics Orientation for State Officials* on 9/1/08. This training clearly explains conflicts of interest and its impact. I have never been in a position to recuse myself from a vote.
- 7) **Progress made to develop mandatory green provisions:** The Commission is making progress by using it's subcommittee's to get feedback through the use of focus groups and open meetings. We are on track to adopting many of the volunteer standards into the mandatory code during the 2010 update process.
- 8) **Changes to the green building standards:** I believe the current process of developing green standards is best for Californians. Using our other state building agencies and sub commissions expertise during this process is helping shape the best green standards possible. I am reviewing these proposed green standards and have no personal changes or agenda.
- 9) **Green standards at local level:** One of the Commissions mandates I support is to develop uniform codes that can be used by all jurisdictions, minimizing vast code differences from one area to its neighbors. While I fully acknowledge the right and the need of local agencies to develop specialized codes, I believe we should review these carefully to see if local agencies are developing codes that should be statewide codes. I prefer to encourage local agencies to participate in the BSB code adoption process as I believe they will find us willing to listen to forward thinking ideas. The Commission is fully supportive of local agencies adopting stricter codes than in our Title 24.
- 10) **Floodplains code timetable:** This should happen during our normal code adoption process from now through 2010.
- 11) **Factors to consider for floodplains:** As a Commission I am bound to use the 9 point criteria, a solid way of evaluating floodplain issues as well as all our code issues.
- 12) **Improving BSC's public outreach:** The Commission uses the internet to post meeting notices, public comment periods and such important documents. In today's world we find this to be the best way to get material to the public.
- 13) **Posting materials online:** The Commission currently post meeting material online.
- 14) **Doing more with less:** The Commission office was affected by the recent state furloughs, however all meetings were held and the code development process continues.
- 15) **Prioritizing with current budget woes:** Our first duty is to the codes, we will prioritize according to public interest should lack of funding require that.



Closing comment: I've enjoyed this first partial year as a Commissioner and I have learned a lot. I believe my background, knowledge and passion for a better California make me a perfect fit to continue representing all Californians in our quest to have the best codes anywhere.

A handwritten signature in black ink, appearing to read 'C. S. Daley'.

Craig S. Daley



April 15, 2009

The Honorable Darrell Steinberg  
President Pro Tempore  
California State Senate  
State Capitol Room 420  
Sacramento, CA 95814-4900

Tony Hoffman

Responses

Bldg. Standards Comm.

Dear President Pro Tempore Steinberg:

This letter is in response to your letter dated April 2, 2009, relating to the confirmation hearing to be held by the Senate Rules Committee for my appointment to the Building Standards Commission (BSC). The hearing is to be held on April 29, 2009.

The following are the fifteen (15) questions that you submitted in the letter and my responses.

1. What do you believe you have accomplished as a member of BSC?

RESPONSE: *I was proud and honored to be appointed to the Building Standards Commission at the beginning of Summer 2008. In the months since then, I have attempted to become aware of all the code books that I should have a working knowledge of, but foremost the "Nine Point Criteria Analysis" to determine if proposed standards should be approved, rejected or returned.*

2. What are your future goals as a member of this commission? How will you measure your success? What challenges do you anticipate in meeting these goals?

RESPONSE: *After my appointment, I was pleased to see that one of the major issues confronting the BSC was the issue of "Green Building Standards", their evaluation and adoption. I feel very fortunate to be part of the very, very broad group that will be able to help set the standards for the future. Success will be measured by implementing effective and substantial "Standards" that are forward thinking, yet achievable, for not only "Green Building Standards", but all "Building Codes Standards". Challenges are as always, peoples' "honest" but very real differences of opinion; in addition, we are faced with the current economic condition and its pressure on all segments of society, including government.*

3. As a member of BSC, how do you balance your role as a member in the organized labor slot with the need to represent all Californians when deliberating policy decisions?

RESPONSE: *Since I was appointed to the BSC at the beginning of last Summer, I have not seen any issues that "tickle" my "Trade Labor sensitivities", as perhaps, an appointment to Cal OSHA or Apprenticeship Council, among others, would have. However, I am confident that I can focus on the requirements and needs of all Californians for better building codes when deliberating policy decisions and issues and refer to the "Nine Point Criteria Analysis" for direction.*

4. What do you believe are the most pressing issues facing BSC?

Senate Rules Committee

APR 21 2009

Appointments



RESPONSE: *There is no question that the most pressing issue facing the BSC is the implementation of effective and substantial Green Building Standards that are achievable. In addition, the BSC will must always be aware of research and new findings in seismic strengthening.*

5. What efforts has BSC made to encourage high school and/or college students to consider jobs in the construction industry?

RESPONSE: *From my understanding, the BSC has not been involved in any specific outreach, but it does provide presentations when requested.*

6. What ethics training have you received to prepare you for your duties? How have you been trained to recognize conflict of interest? Have you ever recused yourself from a vote?

RESPONSE: *Completed the internet "Ethics Orientation for State Officials" as well as "Preventing Harassment for Managers" and "Supervisor Supplement" in the previous nine months. There has not been a situation where I was required to recuse myself or where I felt recusal could have been appropriate because of any perceived conflict."*

7. What progress has been made to develop these mandatory provisions (in the 2010 Edition of the California Green Building Standards Code)?

RESPONSE: *The BSC convened a "green building focus group" in March of this year and it is my understanding that there will be more of these as we finalize the proposed changes to the Code.*

8. What changes to the green building standards would you like to see implemented?

RESPONSE: *Ideally, I would like all of the more strict improvements to the "green standards" to become mandatory tomorrow to preserve our future and to set the standards even higher for our State, our Country and the rest of the World. But, as a realist I recognize that "we're getting there" in as timely a manner that we are able, and hopefully, the rest of the Country and the World will too.*

9. Do you believe the green building standards prevent "greener" standards at the local level? If not, what efforts have you made to educate local agencies regarding their authority to adopt stricter standards?

RESPONSE: *I believe that the standards will not prevent local agencies from adopting standards that are above the state minimum. From my understanding, State law stipulates that locals can adopt stricter standards. From what I have observed and been informed, the BSC attempts to make it clear when they speak to or makes presentations to local building officials that they can adopt standards above the state minimum and there is an ongoing dialogue with the leadership of the California Building Officials Association.*

10. What is the anticipated time frame for the BSC to review and approve this proposal (the requirement for the Department of Water Resources to propose building standards for deep floodplains)?

RESPONSE: *It is my understanding that the DWR proposed regulations will be added to the 2009 code adoption cycle, which currently has a projected adoption and approval date of January 2010.*

11. What factors will you consider when this proposal (the requirement for the Department of Water Resources to propose building standards for deep floodplains) comes before the BSC for adoption and approval?

RESPONSE: *All proposed building standards will be subjected to the so-called "Nine Point Criteria Analysis", as established by the Health and Safety Code, to determine if the proposed standards should be approved, rejected or returned to DWR for further review.*

12. Please explain what is being done to improve the commission's current outreach and public access efforts?

RESPONSE: *The BSC utilizes the internet to post notices and other pertinent information for the public and created an electronic data base of interested parties-including building officials and stakeholders- so that BSC can send information to those parties immediately. In addition, the BSC has been able to webcast their meetings as well as to utilize teleconference lines for the disabled community and others upon request. I will request information regarding the instance you referred to in your questions regarding the wrong date being listed for the next BSC meeting.*

13. Has BSC considered posting its meetings materials online? If so, what is the time frame for the posting? If not, please explain.

RESPONSE: *The BSC posts proposed building standards and other pertinent meeting information online as soon as it is available but no later than 10 days prior to the meeting.*

14. What do these actions mean for BSC (Executive Order S-09-08)? Given the staff cuts and restrictions on personal services contracts, how will BSC ensure it is able to meet the needs of its constituents in a timely and efficient manner?

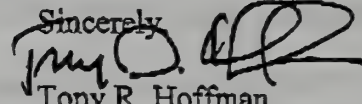
RESPONSE: *The BSC has had to adjust to cutbacks like all state agencies including the two furlough days per month. Fortunately, the Legislature passed and the Governor signed a bill last year that provides additional funding for training and development of codes. This vital funding is assisting the BSC in meeting its obligations and goals.*

15. How does BSC prioritize its responsibilities, particularly given current budgetary realities?

RESPONSE: *The BSC meets its statutory obligations first and then prioritizes by policy directives and needs.*

If you have any further questions of me or need more information, please feel free to contact me at any time. I will provide responses as soon as I am able. My office number is

Thank you for your consideration of my appointment to the Building Standards Commission.

Sincerely  
  
Tony R. Hoffman



Nettie Sabelhaus, Appointments Director  
Senate Rules Committee  
Room 420  
State Capitol  
Sacramento, CA 95814

A. Michael Paragiris  
Responses  
Bldg. Standards Comm.

April 11, 2009

Re: Building Standards Commission Conformation  
of April 29, 2009

Dear Ms. Sabelhaus:

Please find below my responses to the Committee's questions concerning my confirmation as a member of the Building Standards Commission. Also included you will find a current copy of my Form 700.

1. What do you believe you have accomplished as a member of BSC?

Since May 2008 I have opened a dialogue with many members of the disability community. For some there is a great mistrust of government and a lack of understanding of its functioning. I believe we are moving in a positive direction. In some cases progress has come from listening and in other situations it has been productive to speak with groups regarding how rule making works. Thus, creating a more realistic vision of what can be expected.

2. What are your future goals as a member of this commission? How will you measure your success? What challenges do you anticipate in meeting these goals?

It is my hope that I can create understanding among the parties involved in the commission's role, as related to access. As noted above, many persons with disabilities need to improve their understanding of how the building code is created. This included the perspective of those holding different interests. For many involved in the code development process, an improved understanding of the built environment's impact on a person with a disability who is trying to access it, would serve all parties well. Clearly, this can be a difficult process. Not all parties involved will leave the process satisfied.

The process to establish the 2010 CBC is beginning. I look forward to hearing and understanding the issues brought forward by the disability community, and working to improve the CBC. I hope to see us addressing issues that have blocked certification of the Code by the US Department of Justice.

Senate Rules Committee

APR 21 2009

**The greatest challenge is finding the middle ground among a very diverse field of stakeholders and creating solutions that meet the common good. Success is measured by the effectiveness of each decision we make.**

**On a broader sense I look forward to supporting the enhancements to the green code and assisting the commission in resolving sensitive issues.**

3. As a member of BSC, how do you balance your role as a member in the disabled community slot with the need to represent all Californians when deliberating policy decisions?

**The law provides us guidance in this matter. Within civil right requirements we see the mandate for inclusion. We also see the limits that have been set forth by the "undue burden" criteria. Thus, we must create inclusion that does not fundamentally alter the manner in which we operate. If we do this correctly, we will come as close as possible to meeting the common good for California as a whole.**

4. What do you believe are the most pressing issues facing the BSC?

**As with all of State government, the test of our times is to be responsive to the needs of Californians while operating with very limited resources. The BSC is facing the triennial code cycle, the emergence of the Green Building Code and ever changing issues that come with new building products, for example PEX. This is in the context of the tug and pulls from a broad set of stakeholders. Creating an understanding of the BSC and the code development process is also an important challenge. Constituencies benefit by having a realistic understanding of the process.**

5. What efforts has the BSC made to encourage high school and/or college students to consider jobs in the construction industry?

**I cannot speak to the activities of other members. As part of my role as President of the California Association of ADA Professionals, outreach has occurred to Butte College's program for building inspector training. Having formed that relationship, we will be providing class speakers. This can now become a forum for me, as a BSC member to work with this program.**

6. What ethics training have you received to prepare you for your duties? How have you been trained to recognize conflicts of interests? Have you ever recused yourself from a vote?

**I completed the California Department of Justice on line conflict of interest training in 2008. This course defines both conflict of interest and non compatible activities. Thus far, an issue has not come to the BSC that would make it advisable for me to recuse myself.**

7. What progress has been made to develop these {Green Standards as} as mandatory provisions?



**BSC has approved the initial green building code as voluntary in nature. We are currently in the process of beginning the triennial code cycle, which will result in the 2010 CBC which is set to be effective January 1, 2011. Mandatory green provisions should be contained within this code. This moves California ahead of other states in the nation and ahead of the time table of developing such a code by 2013.**

- 8. What changes to the green standards would you like to see implemented?**

**I would like to see substantive mandatory standards eventually implemented. In the meantime, we need to maintain numerous voluntary standards that can be moved to mandatory as justification becomes available.**

- 9. Do you believe that the green building standards prevent “greener” standards at the local level? If not, what have you done to educate local agencies regarding their authority to adopt stricter standards?**

**No, I believe that local jurisdictions do have, and rightly so, the authority to move beyond the CBC, making their communities greener. This will be a positive as they do so. More clarity is needed to ensure this is understood. I have not been involved to date in an educational effort in this area. However, other members of the commission and staff have ongoing dialogue with the leadership of the California Building Officials Association and have made it clear when they speak to or do presentation for local building officials.**

- 10. What is the anticipated time frame for BSC to review and approve {the Deep Floodplains}this proposal?**

**The adoption process of building standards by the BSC for the deep floodplains will follow the standard process. As with any other proposal, being considered by the commission, the public will have an opportunity to review the proposal and comment on its merits. We anticipate this will be approved during the commission work by 2010.**

- 11. What factors will you consider when this proposal comes before the BSC for adoption and approval?**

**All building standards are reviewed to HSC 18930, which is the 9 point criterion. In addition, to this I will be looking at the language of the proposal, the testimony regarding its impact and its importance to safety.**

- 12. Please explain what is being done to improve the commission’s current outreach and public access efforts?**

**The concerns raised have been forwarded to and discussed with the BSC Executive Director. The telephone line issue has been corrected. BSC has created an electronic data base of interested parties, building officials and stakeholders, so BSC can send**



**information to the public instantly. BSC has also been able to webcast the meetings as well as utilize teleconference lines for the disability community and others upon request.**

13. Has BSC considered posting its meeting materials online? If so, what is the timeframe for posting? If not, please explain.

**BSC post proposed building standards and other pertinent meeting material online as soon as it is available but no later than 10 days prior to meetings.**

14. What do (the current state budget constraints} mean for BSC? Given the staff cuts and restrictions on personal services contracts, how will BSC ensure it is able to meet the needs of its constituents in a timely and efficient manner?

**BSC has had to adjust to cutbacks like all agencies, including the two furlough days per month. Fortunately, the legislature passed and the governor signed a bill last year that provides additional funding for training and development of codes. This funding is assisting the commission in meeting its goals.**

15. How does BSC prioritize its responsibilities, particularly given current budgetary realities?

**BSC meets its statutory obligations first and then prioritizes by policy directives and needs.**

**To address setting the BSC priorities and to adjust expectations given the resource issues we face, a strategic plan has been developed and adopted by the BSC. I think there was a broad recognition that more deserves to be done. We had to look at what could be done and what was the most productive at this difficult time.**

Thank you for the opportunity to respond to these issues and concerns.

Sincerely,



R. Michael Paravagna, MS  
Member California Building Standard Commission

Senate Confirmation  
Adele L. Arnold, Member  
Corrections Standards Authority  
Responses to Senate Rules Committee Questions  
April 23, 2009

Adele Arnold  
Responses

Senate Rules Committee

APR 23 2009

**Statement of Goals**

**Appointments**

On July 1, 2005, as part of the Governor's reorganization of the Youth and Adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). It has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of state and federal grants for local correctional facilities. Under the reorganization, CSA was given additional responsibilities, including the setting of minimum standards for state correctional facilities. As a result of legislation signed into law in 2007, CSA is also responsible for setting standards for the awarding of hundreds of millions of dollars for new jails, reentry facilities, and juvenile detention centers.

- 1. Please provide a brief statement of your goals. Have you accomplished the goals you established in your first term? What do you hope to accomplish during your term on CSA? How will you measure your success?**

My goal is to be well prepared and informed in all matters coming before the Board. I will make every effort to attend as many meetings as possible. If appointed to the board I promise the State of California the Governor and the Legislature that I will fully and without reservation carry out my duties as a Corrections Standard Authority Board Member.

If at the end of my term I have assisted the board in providing oversight that funded meaningful projects and insured local and state correctional facilities and programs are designed, constructed and operated in ways that promote the highest degree of public safety I will consider my service to the board a success.

- 2. What training did you receive to help you understand the various responsibilities of CSA? How long did it last? How often do you receive refresher courses?**

Prior to attending my first meeting on the Corrections Standards Authority board I was invited to Sacramento to attend an orientation from the CSA Executive Director and the Deputy Directors responsible for each of the CSA divisions. During the orientation I learned about the functions and responsibilities of the board and encouraged to ask questions. I was also provided with a CSA policy and information briefing binder for reference. In October 2008 I was invited back



Senate Confirmation  
Adele L. Arnold, Member  
Corrections Standards Authority  
Responses to Senate Rules Committee Questions  
April 23, 2009

to meet with the new Executive Director, Kurt Wilson. Mr. Wilson reviewed the role of the board and requested information and suggestions that might improve the efficiency and role of the board.

3. ***The CSA board meets every other month, or about six times a year. Is this often enough for the authority to carry out its increasing number of missions, especially the awarding of various law enforcement funds? How do you stay informed of CSA's activities?***

I believe there are enough yearly meetings scheduled to process the work of the board. There is always an option of calling a special meeting if there is an urgent matter that needs the attention of the board. The agenda and all supporting documents are now available on the CSA website so preparation and review is easy. I've found this to be extremely helpful if I am out of town prior to a meeting. I can review and request additional information from CSA if I need assistance. The meetings have been reorganized placing all consent agenda items at the beginning of the meeting. This allows additional time for agenda items that need more discussion and deliberation. CSA staff does a commendable job of keeping the Board members informed via email, conference calls and written documents.

4. ***What, in your view, should be CSA's top priorities? How have they been impacted by the state's budget problems? If CSA lacks resources, how will you prioritize projects and activities?***

Statute mandates that CSA is to provide leadership and coordination in the field of local and state detention and corrections for the State of California. Construction dollars awarded by CSA for adult and juvenile facility projects is critical in this time of prison reform and juvenile realignment. The board has a critical role in monitoring construction oversight while supporting CSA subject matter experts in statewide efforts to develop program infrastructure and provide funding opportunities to the field. If CSA lacks resources then timelines may need to be lengthened in order to accomplish the oversight and ensure that standards for new jails, reentry facilities and juvenile detention centers are met.



**Assembly Bill 900**

*Under AB 900 (Solorio and Aghazarian), Chapter 7, Statutes of 2007, CSA is to approve plans for \$750 million in new county jail facilities. Under the law, CSA is to give funding preference for new jail construction to counties that assist the state in placing reentry facilities for inmates approaching parole. In addition, CSA is to give preference to counties that assist the state in placing mental health day treatment and crisis care facilities, and for counties that provide mental health and substance abuse care to parolees. As a result of the process established by the legislation, 11 counties now are in line to receive jail construction funds under recommendations released by CSA (see attached chart). The counties had to agree to site new "reentry" prisons designed to improve rehabilitation programs and improve inmate transition back home.*

**5. *What is your understanding of the status of the reentry portion of AB 900 implementation? How do you evaluate the process used to identify counties for AB 900 jail funds?***

The California Department of Corrections and Rehabilitation (CDCR) is currently working with eleven selected counties that are able to move forward in their commitment to site reentry facilities. This is a very involved process requiring close consultation with CDCR who is mandated to review the proposed reentry sites to ensure that it is suitable site. Additionally, the county must demonstrate control of the proposed site, which is verified during the due diligence process. My understanding is that the process can take 18 months or longer depending on the Environmental Impact Report (EIR), California Environmental Quality Act (CEQA) and concurrent public hearings. The counties must also sign agreements and contracts with CDCR and the State Public Works Board, before the county is eligible to receive interim financing.

The board is updated by CSA subject matter experts at every meeting regarding the status of each county, including if the county cannot meet the AB 900 Phase I Request for Proposals (RFP) requirements. Of the original 24 counties on the rank ordered funding list only eleven are moving forward as a result of land issues or community opposition.

**6. *Please describe the mental health and substance abuse facilities that have been established in those counties that are scheduled to receive the AB 900 funds. What role have you played?***

I am not aware of any mental health and substance abuse facilities currently being established in any county that is designated to receive AB 900 funds. Currently, there is

no funding available to counties to fund these facilities, although desperately needed statewide.

- 7. CSA staff says there is another \$160 million to be awarded. Please explain how this process will work. Will counties still need to agree to build reentry facilities in order to receive any of the \$160 million?**

My understanding from the last board meeting held in March 2009 is that the Executive Steering Committee is reconvening on April 27, 2009 to review elements of the AB 900 Request for Proposal and establish a new timeline for the secondary round of bidders. This second release to the field is being called Round 2 of Phase 1.

Unfortunately, out of the 24 projects that were given conditional awards in Phase 1, only eleven are under a current active conditional award. The remaining grantees were unable to meet the requirements to secure the jail construction funding. It is my understanding that counties will again be asked to build reentry facilities in order to receive round 2 funding.

#### **Local and State Facility Responsibility**

*Historically, the board staff has said that the keystone to its success has been taking a collaborative approach—working with counties to get them to meet standards. Critics, however, say that CSA “has no teeth,” and needs additional tools so that, if needed, it can compel counties to meet its standards.*

- 8. How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits is sufficient?**

Inspections of adult and juvenile facilities occur biennially pursuant to Penal Code Section 603.11 and Welfare & Institutions Code Sections 209 and 885. CSA staff is also available to counties by request for technical assistance, to meet compliance issues, or to lend professional guidance for construction projects. I have also requested and received assistance from CSA staff to provide training to the county juvenile justice commission. CSA staff does not conduct surprise visits as they would serve no positive purpose. The role of CSA is to foster trust and collaborations that work toward strengthening relationships for the common good of local agencies and the CSA.

- 9. Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?**



The CSA convenes three meetings in Sacramento, and the other three locations showcase new facility construction or programs funded or administered by the CSA. This allows access to the board for those local corrections administrators and county officials who find it difficult to travel to Sacramento; and, is a way to provide CSA Board members with an opportunity to personally observe the progress of key programs, projects and facilities for which the board is responsible.

I have enjoyed the opportunity to tour different facilities. The tours have been very informative and I have come away with knowledge and innovative ideas that can enhance institutional programs. It is of further assistance to me as Chief because I am always searching for ways to improve conditions of confinement in my county detention center as well as understand problems that are unique to different types of programming space. Additionally, it is rewarding to experience firsthand the great accomplishments guided by the professional work of the CSA.

**10. Do you believe CSA has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?**

The recent settlement agreement reached in the Waters V Tilton lawsuit in March 2008 requires the Corrections Standards Authority (CSA) to adhere to the requirements specified within Section 209 of the Welfare and Institutions Code. Section 209 requires counties, that have identified deficiencies as a result of their biennial inspection to submit to the CSA a corrective action plan that address each issue of non-compliance within 60 days of notification. If the identified issues are not brought into compliance within 90 days after the submission of the corrective action plan, the county is required to come before the CSA Board at its next scheduled meeting for a determination of suitability for the continued housing of minors.

The Facilities Operation Division of the CSA employs 9 funded Field Representatives. The Field Representatives are responsible for inspecting approximately 754 local adult and juvenile facilities for compliance with Title 15, California Code of Regulations.

Although the CSA Board has the authority to determine a juvenile hall as an unsuitable place for the confinement of minors, the CSA does not have the authority to close a facility. CSA findings of unsuitability would be posted on the CSA webpage and made public. Counties could chose to continue housing minors after a determination of unsuitability was made. To date, the CSA has only had four counties come before the Board for a determination of suitability as required in Section 209 WIC.

Depending on the type of corrective action 90 days is not always sufficient time to make structural changes that may be beyond the authority of the Chief Probation Officer to authorize. County boards and bid processes can take months to get in place that will take a corrective action plan well beyond the 90 day time limit. Every situation is unique and must be considered individually. I do not believe any county intends to forego compliance and risk potential liability and a designation of unsuitability. I do not think additional enforcement tools are unnecessary.



Juvenile camps and ranches are not required to come before the CSA Board for determinations of suitability.

Compliance with the Title 15 regulations is not compulsory in adult detention facilities

### **Education Requirements**

*Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.*

#### **11. What oversight do you provide to ensure the inspections are complete and accurate?**

The CSA Board relies on the expertise and competency of their staff to conduct the biennial inspections as required by statute. If at any time CSA board members have questions or concerns regarding any portion of the inspection process, they are encouraged to contact their staff. The CSA staff is very responsive to board members concerns or issues. At the request of the board CSA staff have provided training and technical assistance to counties to assist them in meeting all fully understanding all code requirements.

All unresolved compliance issues identified in the biennial inspection, or that are a result of crowding, are brought to the attention of the CSA Board members during the regularly scheduled meetings.

#### **12. What role should CSA play in ensuring better educational opportunities for the incarcerated? How do you ensure compliance with applicable codes of Title 15 of the California Code of Regulations governing the Department of Corrections and Rehabilitation? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?**

The CSA is responsible for inspecting local juvenile and adult detention facilities for compliance with state regulations. As part of the inspections, officials determine if the facility is in compliance with Section 1370, Title 15, California Code of Regulations (CCR). This section requires juvenile detention facilities to provide an education program that complies with the State Education Code and County Board of Education policies. Section 1313, Title 15, CCR requires the Superintendent of Schools to annually access the educational program. CSA staff relies on this annual

report when determining compliance with regulations. CSA staff does not access the quality of the education programs within juvenile detention facilities, but only accesses compliance with the applicable Title 15 regulations.

If areas of non-compliance are discovered during the inspection, they are detailed in the inspection report. The inspection report is then provided to the facility administrator, facility manager, presiding Juvenile Court Judge, the county Chief Administrative Officer, the chair of the Board of Supervisors, and the chair of the Juvenile Justice Commission. As required in Section 209, Welfare and Institutions Code, the county has 60 days to complete and submit to the CSA a corrective action response. The county has 90 days after the completion of the corrective action response to correct the compliance issue. If the county fails to correct the compliance issue within these time frames, the county will be required to come before the CSA Board, who will make a determination of suitability. If, after examining all relevant facts surrounding the compliance issue, the CSA Board determines the facility is not a suitable place for the confinement of minor's, the finding will be posted on the CSA website.

### **SB 81—The Juvenile Justice Realignment Act**

*With the passage of SB 81 (Budget and Fiscal Review), Chapter 175, Statutes of 2007, more youthful offenders are remaining under county jurisdiction rather than state jurisdiction.*

*This 2007 measure includes \$100 million in lease-revenue bonds for the construction of local youthful offender rehabilitative facilities. And it requires a county to apply to CSA for approval of a county institution established for the purpose of housing juveniles.*

#### **13. What is the status of those applications? How does the board stay informed of progress?**

On March 19, 2009 the CSA Board approved the SB 81 Local Youthful Offender Rehabilitative Facilities Construction Executive Steering Committee recommendations to award Alameda County (\$35 million for the construction of a rehabilitative commitment facility); Stanislaus County (\$18 million for the construction of a rehabilitative commitment facility); San Luis Obispo County (\$13,120,983 for the remodel and expansion of their juvenile facility); Tuolumne County (\$16 million for the construction of a regional juvenile facility); Monterey County was partially awarded \$3,879,017 million toward their proposed \$35 million new juvenile facility; and Shasta County was also partially awarded \$14 million toward their proposed \$15,050,000 juvenile facility.



The CSA Board will receive updates from CSA staff at each meeting in the same manner in which we receive AB 900 updates.

**14. *What are CSA's responsibilities for oversight due to the passage of SB 81? How are you involved? What is your understanding of the purposes for which these funds may be used?***

The CSA provided limited oversight of the Youthful Offender Block Grant (YOBG) process, specifically related to the approval of the Juvenile Justice Development Plans as described in Senate Bill 81. The CSA is not directly involved in the actual distribution of funds related to this block grant, except for the 5 percent of the YOBG that was disbursed to counties due to unforeseen circumstances. The Governor authorized the Department of Finance to coordinate with the State Controller's Office in disbursement of the initial YOBG funds.

The YOBG was designed to support the juvenile offender population shift from the Division of Juvenile Justice to county jurisdictions. Counties are thought to be better able than the state to provide services to this population and in closer proximity to their families and communities. YOBG funds are intended to support local youthful offender justice programs, including but not limited to:

- Risk needs assessments;
- Out-of-home placement costs;
- Day treatment centers, drug and alcohol treatment, and counseling;
- House arrest, electronic monitoring, and intensive supervision;
- Re-entry and aftercare;
- Capacity building strategies; and
- Regional programs.

As part of Senate Bill 81 the CSA does provide oversight of two \$5 million pilot projects funded for three years in Alameda and Los Angeles counties. Both projects were designed to test program models for reducing the flow of young adult offenders to state prison.

**15. *Previous appointees have voiced concerns about whether adequate resources are available to fully implement these changes. Do you share those concerns? If so, please explain.***

The annual YOBG county allocation funding amounts are computed based on a formula that includes a base amount of \$117,000 per youthful offender. There is also a formula computation for parolees who are released from a Department of Juvenile Justice facility to county supervision. Based on population YOBG county allocations range from \$117,000 to several million dollars. Small counties are having difficulty



with start up costs and basic programming and support because there is not economies of scale that allow for program design and development.

As it relates to facility construction, fourteen counties submitted proposals in response to the SB 81 Local Youthful Offender Rehabilitation Facilities Construction Request for Proposals (RFP) and their request for funding exceeded \$232,171,670. The CSA Board fully funded 4 counties and partially funded 2 counties with the \$100 million dollars in lease revenue financing. One county that submitted a proposal does not have a detention facility and cannot construct a facility without the financial assistance of the CSA funding. With the realignment of the Division of Juvenile Justice and the return of juveniles to the county of origin, there is not adequate space (commitment and treatment facilities) in most counties to manage the increased population.

### **Grant Administration**

*The authority awards a variety of law enforcement grants.*

- 16. *What oversight does the board perform to ensure that funds are being spent on the state purpose of grants? How does the board determine whether programs are achieving desired results?***

To ensure that grant and program funds are expended in accordance with program requirements, the CSA has provided oversight that is consistent with federal and state legislative requirements, Generally Accepted Accounting Principles, and prudent administrative practices, whenever possible. The CSA board has charged staff with regular monitoring (both programmatic and fiscal) of programs. The monitoring, reporting outcome measures and technical assistance provided by the CSA staff provide information to the board regarding achieving desired results. The CSA expert matter professionals provide periodic reports to the Board at regularly scheduled meetings regarding programs administered by the CSA.

- 17. *Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest in the awarding of grants?***

The Board goes to great length in protecting against potential conflicts of interest, especially during the competitive grant process. To protect against potential conflicts CSA Board Members and State Advisory Committee on Juvenile Justice and Delinquency Prevention (SAG) Members receive information regarding the recusal process. If the Board member believes that there is or that there may be

a perception of bias the Board member will follow the recusal process and not participate in the review, rating, or judging of proposals or situations in which a bias may be perceived. This recusal is most frequently exercised when a Board Member or Committee Member's particular agency or department, or affiliated agencies or departments from within the same jurisdiction, are entered into competition for grant funds. This practice of recusal has not compromised the integrity of the rating process and works quite well.

CALIFORNIA LEGISLATURE

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VICE-CHAIR

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NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG  
CHAIRMAN

April 8, 2009

*Carol Biondi  
Responses*

Carol O. Biondi

Dear Ms. Biondi:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment as a member of the Corrections Standards Authority on April 29, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by April 23, 2009.

We would also like to receive an updated Form 700, Statement of Economic Interest, by April 23<sup>rd</sup>.

**Mission**

On July 1, 2005, as part of the Governor's reorganization of the Youth and Adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). It has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of state and federal grants for local correctional facilities. Under the reorganization, CSA was given additional responsibilities, including the setting of minimum standards for state correctional facilities. As a result of legislation signed into law in 2007, CSA is also responsible for setting standards for the awarding of hundreds of millions of dollars for new jails, reentry facilities, and juvenile detention centers.

1. *Please provide a brief statement of your goals. Have you accomplished the goals you established in your first term? What do you hope to accomplish during your term on CSA? How will you measure your success?*



2. *What training did you receive to help you understand the various responsibilities of CSA? How long did it last? How often do you receive refresher courses?*
3. *The CSA board meets every other month, or about six times a year. Is this often enough for the authority to carry out its increasing number of missions, especially the awarding of various law enforcement funds? How do you stay informed of CSA's activities?*
4. *What, in your view, should be CSA's top priorities? How have they been impacted by the state's budget problems? If CSA lacks resources, how will you prioritize projects and activities?*

### **Assembly Bill 900**

Under AB 900 (Solorio and Aghazarian), Chapter 7, Statutes of 2007, CSA is to approve plans for \$750 million in new county jail facilities. Under the law, CSA is to give funding preference for new jail construction to counties that assist the state in placing reentry facilities for inmates approaching parole. In addition, CSA is to give preference to counties that assist the state in placing mental health day treatment and crisis care facilities, and for counties that provide mental health and substance abuse care to parolees. As a result of the process established by the legislation, 11 counties now are in line to receive jail construction funds under recommendations released by CSA (see attached chart). The counties had to agree to site new "reentry" prisons designed to improve rehabilitation programs and improve inmate transition back home.

5. *What is your understanding of the status of the reentry portion of AB 900 implementation? How do you evaluate the process used to identify counties for AB 900 jail funds?*
6. *Please describe the mental health and substance abuse facilities that have been established in those counties that are scheduled to receive the AB 900 funds. What role have you played?*
7. *CSA staff says there is another \$160 million to be awarded. Please explain how this process will work. Will counties still need to agree to build reentry facilities in order to receive any of the \$160 million?*

## **Local and State Facility Responsibility**

Historically, the board staff has said that the keystone to its success has been taking a collaborative approach—working with counties to get them to meet standards. Critics, however, say that CSA “has no teeth,” and needs additional tools so that, if needed, it can compel counties to meet its standards.

8. *How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits is sufficient?*
9. *Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?*
10. *Do you believe CSA has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?*

## **Education Requirements**

Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

11. *What oversight do you provide to ensure the inspections are complete and accurate?*
12. *What role should CSA play in ensuring better educational opportunities for the incarcerated? How do you ensure compliance with applicable codes of Title 15 of the California Code of Regulations governing the Department of Corrections and Rehabilitation? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?*

## **SB 81—The Juvenile Justice Realignment Act**

With the passage of SB 81 (Budget and Fiscal Review), Chapter 175, Statutes of 2007, more youthful offenders are remaining under county jurisdiction rather than state jurisdiction.

This 2007 measure includes \$100 million in lease-revenue bonds for the construction of local youthful offender rehabilitative facilities. And it requires a county to apply to CSA for approval of a county institution established for the purpose of housing juveniles.

13. *What is the status of those applications? How does the board stay informed of progress?*
14. *What are CSA's responsibilities for oversight due to the passage of SB 81? How are you involved? What is your understanding of the purposes for which these funds may be used?*
15. *Previous appointees have voiced concerns about whether adequate resources are available to fully implement these changes. Do you share those concerns? If so, please explain.*

### **Grant Administration**

The authority awards a variety of law enforcement grants.

16. *What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?*
17. *Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest in the awarding of grants?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DARRELL STEINBERG

DS:MG



## April 23 2009 Senate Rules Committee responses for Carol O. Biondi

- 1) Justice System in California at the State and County level. While I supported his initiative at CSA and in LA , I believe that he intended broader reforms statewide. Since this has not been done , I do not believe this goal of mine has been accomplished.....yet. On several occasions, and CSA meeting minutes will reflect this, I inquired about the legislative mandate for CSA to develop standards for State facilities In 2006, I stated as a goal to support the Governor's initiative to reform the Juvenile and each time I was told that CSA staff had not been directed to begin that process, and while the legislation requires the CSA to develop standards it does not authorize them to inspect the facilities for compliance. After three or four such inquiries, I stopped asking. CSA has an excellent staff of hard working individuals and I'm quite sure with sufficient resources would willingly take on this responsibilities.

In my second term I hope to accomplish more in terms of statewide Juvenile Justice reform by advocating for many of the recommendations in the State Commissions Master Operational Plan. There is very little accountability for the hundreds of millions of dollars the state provides counties for rehabilitative programs. For the YOBG there is none at all. I requested that staff give a report on what counties were doing with the funds at 6 months . This report was given to the CSA at their meeting in July 2008. I knew that LA was not doing what they reported to the state but there was nothing they could do about it and then in October of 2008 I sent the CSA the job postings for the program that LA Probation reported was operational but in fact they hadn't even begun to staff it. I have since learned that the \$ 21 million dollars LA has received has been spent but not on the program submitted to the state. The CSA staff was very frustrated by this information . In the legislation there is a provision 1962(B) that CSA may "monitor, inspect, programs and facilities supported by block grant funds and enforce violations with suspensions or cancellations of grant funds" But they have no resources to implement this part of the mandate. Counties simply submit a plan, CSA approves it and that is the end of it. Before the legislation was passed, I met with Gloria Romero and strongly suggested putting real accountability in the legislation but that did not happen. I also want to be supportive of the staff and not make unreasonable demands of them so I have not pushed this issue further. I do believe that the various state to county funding streams need to be coordinated better and much more monitoring of these funds is necessary. In Los Angeles, the youth in the facilities are not receiving the services that the state has identified and is paying for in the JPCF or the YOBG and only partially in JJCPA.

It is also a Goal of mine to raise Awareness of the State Advisory Group/The State Advisory Committee on Juvenile Justice and Delinquency Prevention. It is an excellent representation of experts from all over the state and could be used by the Governor and

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legislature more. It could have easily functioned as the State Commission by adding a few additional members.

I am disappointed more wasn't accomplished by the CSA and SAG but since the state operated without either for so long there was a lot of back work that needed to be done. It wasn't for lack of trying on my part. I spend a tremendous amount of time on these issues. I have never missed a CSA meeting and only one SAG meeting for a friend's funeral. I hope that there will be measurable improvements in accountability for state funds. It is difficult to measure one individual's contributions but I would certainly be open to any of the Committees suggestions as to how to do that.

- 2) I have not had a training for general CSA duties since the original orientation but have received excellent specific training for the Committees I have agreed to Co-Chair and Chair. I was Co-Chair of the Juvenile Rehabilitative Facility Construction Funds Committee and received a full day training on Proposal evaluation and rating. I have also received training for two other committees I Chaired and co-chaired for Title II Program Funds. The State Advisory Committee had a two day training done by an OJJDP expert from Alaska who assisted us in preparing a required 3 year strategic plan. In addition the staff is very, very responsive to questions from members.
- 3) I believe that meeting once every other month is sufficient IF the ESC structure is used often and efficiently. Most members serve on one or more ESC's All members should be required to serve on at least one a year. These committees are established for specific tasks. I think we should have standing committees other than SAG as well. I suggested that early on and that idea was rejected. I believe the new CSA director might be more receptive than the prior one so I might suggest it again. We are getting four new members and one is a real dynamo (Sandra McBrayer) so I expect that there will be more participation by members.
- 4) As I have previously stated, I believe CSA has to provide more accountability for tax payers money and ensure that it is bringing about its intended reduction in recidivism and incarceration and improved outcomes. The Prison Law Office lawsuit of CSA has empowered the staff and we have had more counties appear before us for suitability rulings and one came very close to having their halls closed. This is an improvement but more needs to be done. The staff has to rely on local specialists verbal assurances that medical and educational standards or being met. In my opinion this is not sufficient.

The state budget cuts have impacted CSA ability to inspect in the field and travel for important trainings and conferences. Those responsibilities that protect children's safety should be the first priority of CSA.



- 5) I was not on the ESC for the AB 900 Adult facility Construction funds so my knowledge of the process is only what was in the Committees recommendations to the Board. I did serve on a three person appeal panel for One County and it was an easy decision that CSA was correct in their decision to deny the full funding. The entire process has been a contentious one that is still going on. I know LA's Sheriff is not happy about the results and feels that they were disadvantaged because they didn't have enough time to find a location. Since I am the only member from LA County, I made sure that Sheriff Baca received all of the information I had. I think the staff that worked on this is excellent and did a very good job. It is not easy. I believe they will be starting phase II of the process soon.
- 6) I believe that most of the eleven County's who were awarded funds represented in their proposals that rehabilitative services will be available in the re-entry facilities.
- 7) It has not been determined how the unused \$160 million will be awarded. There is some interest in allocating this for more Juvenile construction. All Adult facilities funded by AB 900 will have to have re-entry programs included in the plans.
- 8) The Prison Law Office/CSA lawsuit settlement has given the staff a legal mandate and more authority to recommend to the board that Juvenile Facilities be found unsuitable. I agree that CSA should begin with Counties in a collaborative manner but when it is obvious to them that only they are being collaborative, they should be much tougher including surprise visits. I spent a great deal of time on this issue in the last year. Los Angeles Probation was found to be out of compliance with 80 minimum standards. The Chief was thumbing his nose publicly at the CSA and reporting to the BOS that they couldn't do a thing to them. I went to Board offices and our CEO and informed them that if they didn't take this seriously, CSA would find the Halls unsuitable which would lead to their closure. Los Angeles Probation came to the CSA twice totally out of compliance and left with a motion that if they came to the third meeting with even one violation, the halls would automatically be found unsuitable. This was unprecedented. I had a great deal of inside information that I brought to the staff and the CSA Board and I do believe they would have ordered them closed. The staff spent a tremendous amount of time in LA helping the department so they did correct all of the violations. I believe they accepted verbal assurance from other inspectors that they should have required in writing and I brought this up at the CSA meeting. I believe that LA is currently lying to CSA about "Crowding" and the only way to prove it is to do a surprise visit. Counties need to know that this could happen and the consequences for this are very, very serious.



- 9) Since I am a member of the LA County Commission on Children and Families, I am allowed to visit any County program for kids at risk. I go to the LA facilities all the time -- three or four times a month. I think every CSA member should be doing this in their communities and should be encouraged by staff to do so. I usually inform the Camp Directors and Hall Superintendents that I am coming but I have on many occasions arrived unannounced and gone inside. I recommended that CSA Members be given proper identification to do this and we have received them.
- 10) I definitely think that CSA DOES NOT have sufficient powers or tools. They do have some that they interpret differently than I do. For Example: When LA came back to the CSA for the second time still with multiple serious violations and didn't seem concerned about it at all, I made a suggestion that we require them to notify parents and the youth's lawyers about their current CSA status which was out of compliance. The Board could have found them unsuitable at that meeting because they were and met that criteria. If we had found them unsuitable we could have required a range of sanctions including notifying all parties. My thinking was that that was a lesser sanction but one that we could require. I wanted to ask the State Attorney General prior to the meeting but was asked not to and their counsel say we could not do that. This process needs a big time overhaul and clarifying legislation in the light of the lawsuit and more information about how necessary programming is for these young people if they are going to be incarcerated. While Programming is included in the minimum standards, CSA doesn't feel they have much to say about it. I believe they must come down hard on counties that are just warehousing and often brutalizing young people which ultimately just makes our communities less safe.
- 11) CSA relies on the provider of Educational services (The local county office of education) to hold themselves accountable for Title 15 Section 1370 regulations. This is not sufficient. Even though the DOJ has been monitoring the education provided in LA's halls for 5 years, it is still below community standards and too many children every day are denied any services. There is a new extremely knowledgeable CSA inspector for Los Angeles, Toni Gardner, who did look at classes and talk to kids recently but relied on the self reporting of LACOE in finding them in compliance. This is true in too many other areas where Local Departments verbal assurances are sufficient for CSA: Fire and Life safety, Health (Mental Health) and Medical, Health-Environmental, Health-nutrition, Building Safety, School Programs, Juvenile Court and Probation Commission. Section 1313 requires that these local inspections be done annually and given to the facility administrator. The CSA's responsibility beyond that is not stated in the regulations but CSA has accepted verbal assurances. In the January CSA meeting on LA suitability I stated my opinion that that was not sufficient. In at least one situation I knew that the local inspection was not accurate. Probation Departments are required to get parental

medical permission forms (section 1434). This was not happening and I had done the research at one of the camps to prove that it wasn't but the word of a local inspector was sufficient. If they had not accepted that verbal assurance, LA Halls would have been found unsuitable that day. I did not want that to happen because it would be harmful for the youth involved but LA was still technically out of compliance.

12) CSA should require data outcomes on achievement before approving Education programs in California facilities. One the issue of sufficient space, CSA is very clear about and will find facilities in violation for this. In Los Angeles, it was CSA that required the use of Academy classrooms because there wasn't adequate space. CSA was diligent in assuring that they were actually being used. When it comes to the facility, they will be very clear and readily find compliance violations. It is in all of the Program areas they believe they have little authority to identify violations. I think they should scrutinize these areas because local government agencies are NOT going to find a member of the local family out of compliance. I do not know if CDCR applies Title 15 criteria when they inspect themselves. CSA currently has no oversight of state facilities.

13) At the March 2009 the CSA conditionally awarded Counties construction financing based upon the recommendations from the SB 81 Local Youthful Offender Rehabilitation Facilities Construction Financing Program ESC. I Co-chaired this Committee with Probation Chiefs Linda Penner and Adele Arnold. Fourteen Counties applied and the following counties were awarded funds: Alameda, \$35,000,000, Stanislaus \$18,000,000, San Luis Obispo \$13,120,983, Monterey, \$3,879,017, Tuolumne \$16,000,000, Shasta, \$14,000,000. The CSA staff responsible for these funds will report comprehensively to the Board regularly on the status of the progress.

The Process was very well organized by CSA and required a considerable time commitment on the part of the Committee. Most of the proposals were excellent and it would have been gratifying if we could have spread the funds out a little more but I understood why it was organized the way it was and it was a fair process. I have one very serious concern that I believe needs to be dealt with before another similar process is begun and that is, what if there were sufficient funds to provide financing to all the counties that submitted proposals? One of the facilities was for an adult prison type facility with a 120 wet rooms. It by no means could be considered a rehabilitative facility. Such facilities are known to be harmful for children. Since there were limited funds, the process worked and this was rated last – way out of the running. However if there had been sufficient funds, the CSA would have allowed this horrible facility to be built even



though they know it would not be a rehabilitative and a horrendous use of state money. Other County's proposals were actually to get rid of such facilities. CSA believes they have no authority to stop or even use the expert knowledge to advise an ESC in such a circumstance. This is an issue that must be addressed. It is not enough for CSA to simply organize the process and allow a complete waste of tax payer money and in this particular case something that any expert would agree is harmful to children. CSA should be given the authority able to stop state funds from being wasted.

- 14) With the exception of overseeing the entire construction process for the Juvenile Facilities that were funded and receiving and filing counties plans for use of the SB 81 block Grants, CSA provides no oversight of the use or misuse of the program funds --- NOTHING ABSOLUTELY NOTHING . This is terribly frustrating especially since I know how irresponsibly Los Angeles is mishandling those funds which are \$5,500,000 in the last 6 months of 07/08 \$16,000,000 for 08/09 and a projected \$22,000,000 for 09/10. I understand what was mandated in the legislation which requires specifically detailed rehabilitative program services for non 707 B offenders closer to their families It also requires using programs that are known to be effective, validated assessment tools and data collection. These programs should be coordinated with JJCPA programs. A State Commission was created to produce a Juvenile Justice Operational Master Operational plan. This has been completed, submitted and is EXCELLENT. The Commission has been unsettled . I would encourage the Senate Rules Committee to consider utilizing the State Advisory Committee on Juvenile Justice and Delinquency Prevention for such assignments in the future and to take up where the Commission stopped.
- 15) I agree with previous appointees that adequate resources have not been provided to the CSA to ensure that these funds are being used as mandated by SB 81 and in Los Angeles case, I know it is not. While the legislation provides for the CSA to monitor inspect and suspend or cancel YOBG funds, the resources to do this were not provided and it is beyond the capacity of the organization to undertake this responsibility.
- 16) Assuming that you are referring to the OJJDP Federal Funds of JABG and the Title II and V grants which must go to local government units and often go to County Sheriff or Police Departments, The CSA staff provides excellent oversight, technical support, on-site visits and monitoring that includes grantees comply with all of the requirements. The State Advisory Group serves as the ESC for this process and recommends to CSA how these funds should be allocated. CSA staff review any data or performance measures that are collected. In their reports to the Board it is clear they know these programs very well. However, I do not believe funds cover the kinds of scientific evaluations that have been recommended by the State Commission. The only State



funded program that requires evaluations in the legislation is the JJCPA. Some counties have quality independent evaluators, some evaluate themselves and some do very poor evaluations. Continued funding does not depend on good outcomes. The YOBG and JPCF funds are not being used for their intended purpose of Rehabilitation because the legislation doesn't require accountability. This is another area where defining legislation would improve results. When CSA is provided the legislative authority and sufficient resources to do a good job, they do an excellent job.

- 17) CSA is extremely diligent when it comes to protecting a process from being unfair to Counties or Agencies. When an ESC is put together, the protocols are made very clear and understandable to all members. Anyone with any kind of interest in a particular grant, direct or indirect, is strongly advised to recuse themselves from voting on the award and you are instructed not to influence in any way another ESC's member's vote. They are extremely careful about this. It does happen that member's counties receive funds and those individuals have contributed a considerable amount of volunteer time to the process. It is possible that influences other members decisions but I see nothing unfair about that. These individuals have clearly provided the leadership in their counties that have resulted in high marks in the ratings. If there are concerns expressed by losing counties, perhaps they should volunteer to serve on an ESC. These committees are made up of mostly members from the Community. I have served on four and have been very impressed by the handling of this situation by CSA staff.

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Senate Confirmation  
John L. Ingrassia, Member  
Corrections Standards Authority  
Response to Senate Rules Committee Questions  
April 23, 2009

**Statement of Goals**

*On July 1, 2005, as part of the Governor's reorganization of the Youth and Adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). It has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of state and federal grants for local correctional facilities. Under the reorganization, CSA was given additional responsibilities, including the setting of minimum standards for state correctional facilities. As a result of legislation signed into law in 2007, CSA is also responsible for setting standards for the awarding of hundreds of millions of dollars for new jails, reentry facilities, and juvenile detention centers.*

- 1. Please provide a brief statement of your goals. Have you accomplished the goals you established in your first term? What do you hope to accomplish during your term on CSA? How will you measure your success?**

My primary goal is to work closely with county sheriff's, directors of corrections (for both local and state run facilities) and chief probation officers, as well as other local officials and community based service providers to achieve continuous improvement in the conditions of local adult and juvenile detention facilities and state prisons. I also strive to achieve continuous improvement in the delivery of effective local and state corrections programs.

My success will be measured by ensuring I do more than simply attend board meetings and vote on issues brought before us. For example, in my almost three years of service with the CSA I have served as Chair of Executive Steering Committees (ESC) tasked with amending Title 15 Local Adult and Juvenile Regulations as required by Assembly Bill 478, the 2008 Titles 15 & 24 Adult Regulations Revision ESC and most recently, Chair of the Jail Profile Survey Revision ESC. The quality and effectiveness of the finished product of these ESC's and other completed work will provide me the opportunity to measure my success.

- 2. What training did you receive to help you understand the various responsibilities of CSA? How long did it last? How often do you receive refresher courses?**

At the onset of my first term as a Board member, I was provided an orientation from CSA management staff that detailed each of their respective areas of responsibility within the CSA. Since it was over two years ago when I received this orientation, I do not recall the length of the session. However, I do remember leaving feeling well informed and ready to begin working with the CSA. While no refresher orientation session has been offered to me, it is made clear to all Board members that they may contact CSA staff at any time should they have questions or require assistance.

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3. *The CSA board meets every other month, or about six times a year. Is this often enough for the authority to carry out its increasing number of missions, especially the awarding of various law enforcement funds? How do you stay informed of CSA's activities?*

Based upon my experience thus far, I believe Board meetings have been held frequently enough to accomplish our business. The agenda for these meetings, absent a significant public comment period, rarely goes beyond two or three hours.

4. *What, in your view, should be CSA's top priorities? How have they been impacted by the state's budget problems? If CSA lacks resources, how will you prioritize projects and activities? .*

In my opinion, the CSA's top priorities should be as follows;

- Ensure Phase I of the AB 900 process is fairly implemented and all targeted goals are met to allow for Phase II monies to be released.
- Ensure counties awarded conditional SB 81 funding receive the necessary support and resources from the CSA to help make their projects come to fruition.
- Ensure the final RFP developed for the awarding of AB 900 Phase II funding is fair and equitable and meets the needs of small, medium and large counties.
- Ensure CSA staff continues to regularly monitor counties operating juvenile facilities with recent history of Title 15 noncompliance issues. The Board needs to be continually informed of facility conditions to ensure improvements made were not temporary measures aimed at avoiding a non-suitability finding.

#### **Assembly Bill 900**

*Under AB 900 (Solorio and Aghazarian), Chapter 7, Statutes of 2007, CSA is to approve plans for \$750 million in new county jail facilities. Under the law, CSA is to give funding preference for new jail construction to counties that assist the state in placing reentry facilities for inmates approaching parole. In addition, CSA is to give preference to counties that assist the state in placing mental health day treatment and crisis care facilities, and for counties that provide mental health and substance abuse care to parolees. As a result of the process established by the legislation, 11 counties now are in line to receive jail construction funds under recommendations released by CSA (see attached chart). The counties had to agree to site new "reentry" prisons designed to improve rehabilitation programs and improve inmate transition back home.*

**5. *What is your understanding of the status of the reentry portion of AB 900 implementation? How do you evaluate the process used to identify counties for AB 900 jail funds?***

My understanding is that CDCR staff is currently working with several counties that agreed, as part of their AB 900 RFP submittal, to assist the State with the siting of reentry facilities. Staff must review the proposed reentry sites to ensure construction suitability. This process should take between 12-18 months but could be longer should issues arise with certification of Environmental Impact Reports and or California Environmental Quality Act. In addition, participating counties must sign a number of agreements and contracts with CDCR and the State Public Works Board before the county is eligible to receive interim financing for their jail construction projects. Several counties have had difficulty getting needed approval to sign these agreements and have had to pull out of the process.

CSA staff updates the Board at each meeting regarding the status of each county, including those counties unable to meet the AB 900 Phase I RFP requirements. In my opinion, the RFP requirements and evaluation process has been fair and equitable.

**6. *Please describe the mental health and substance abuse facilities that have been established in those counties that are scheduled to receive the AB 900 funds. What role have you played?***

To my knowledge, no mental health and substance abuse facilities have been constructed in counties awarded conditional AB 900 funding.

**7. *CSA staff says there is another \$160 million to be awarded. Please explain how this process will work. Will counties still need to agree to build reentry facilities in order to receive any of the \$160 million?***

I believe over \$160 million dollars in lease revenue financing has reverted back to the CSA Board from counties that could not site a reentry facility and a new AB 900 ESC has been selected and is scheduled to convene later this month. This new ESC will develop and or revise the criteria for the AB 900 Phase I Round 2 RFP.

Any county that receives AB 900 financing for the construction or remodeling of a local jail during any part of Phase I must site a reentry facility.

### **Local and State Facility Responsibility**

*Historically, the board staff has said that the keystone to its success has been taking a collaborative approach—working with counties to get them to meet standards. Critics, however, say that CSA “has no teeth,” and needs additional tools so that, if needed, it can compel counties to meet its standards.*



**8. How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits is sufficient?**

The Penal and Welfare and Institutions Codes require CSA staff to conduct biennial inspections of local adult and juvenile facilities. In addition to the required inspections, all counties are aware that the CSA is always available to provide ongoing technical assistance to facilities.

As a Board member and local facility administrator, I am not aware of an instance in which the CSA has made a surprise visit to a facility for inspection purposes.

I believe the biennial inspection cycle is sufficient. If there are suitability issues with inspected facilities, the CSA has the ability to schedule more frequent inspections at identified facilities.

**9. Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?**

The CSA has scheduled several Board meetings at facilities throughout the State. After meetings, all Board members are offered a tour of these facilities. Absent these tours, I have not requested or been provided an opportunity to visit facilities to familiarize myself with conditions. I learn about the issues and conditions from information and inspection reports provided by CSA staff.

**10. Do you believe CSA has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?**

Currently the CSA does not have any authority to enforce its standards if it finds a facility out of compliance after inspections are made. Titles 15 and 24 California Code of Regulations (CCR) minimum standards for local adult and juvenile detention facilities are not mandatory. Therefore, CSA can find a facility in non-compliance with these regulations, but it does not have statutory authority to compel an agency to comply with all of the standards.

CSA maintains its effectiveness by fostering solid working relationships with counties to assist them in complying with the regulations. This relationship between CSA and the counties is results in ongoing dialogue, and a strong commitment by counties to achieve full compliance with all of the applicable Titles 15 and 24 CCR. This process has been effective for years and I do not believe it requires any changes at this time.

### **Education Requirements**

*Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.*



**11. *What oversight do you provide to ensure the inspections are complete and accurate?***

I have relied upon CSA supervisory staff to review inspection reports for technical completeness. As a CSA Board member, I have complete access to adult and juvenile inspection reports, and can speak directly to the field representatives who are responsible for conducting inspections.

**12. *What role should CSA play in ensuring better educational opportunities for the incarcerated? How do you ensure compliance with applicable codes of Title 15 of the California Code of Regulations governing the Department of Corrections and Rehabilitation? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?***

I believe the current role played by CSA related to educational opportunities is appropriate and should continue unchanged. The CSA inspectors rely upon a report from the county superintendent of schools stating how the school program complies with the educational requirements of Title 15. Staff does not assess the quality of the education programs provided, they simply determine the level of compliance with specifically identified Title 15 regulations.

Any county not meeting its obligation to provide adequate classroom space should be required to complete an acceptable Compliance Plan within a specified period that details what corrective action will be taken. If the plan is not implemented as detailed, the issue shall be brought before the Board for a suitability determination. This process has been utilized recently by the CSA with great success.

**SB 81—The Juvenile Justice Realignment Act**

*With the passage of SB 81 (Budget and Fiscal Review), Chapter 175, Statutes of 2007, more youthful offenders are remaining under county jurisdiction rather than state jurisdiction.*

*This 2007 measure includes \$100 million in lease-revenue bonds for the construction of local youthful offender rehabilitative facilities. And it requires a county to apply to CSA for approval of a county institution established for the purpose of housing juveniles.*

**13. *What is the status of those applications? How does the board stay informed of progress?***

At the most recent CSA Board meeting, of which I was present, the Board unanimously approved SB81 conditional funding for six of the fourteen counties that submitted proposals.

The Board has received updates from CSA staff at each meeting. These updates have included brief descriptions of the type of projects proposed such as replacement camp facilities, replacement juvenile halls or expansion projects.

**14. What are CSA's responsibilities for oversight due to the passage of SB 81? How are you involved? What is your understanding of the purposes for which these funds may be used?**

I believe the CSA's responsibility for oversight due to the passage of SB 81, as it relates to facility construction, is much the same as that of AB 900. The CSA was responsible for creating, with Board approval, an ESC that developed an RFP. This RFP was reviewed by the Office of the Governor, Office of the Attorney General, CDCR Legal Affairs and SPW Board prior to being released to the field.

I have been involved as a Board member by approving the content of the ESC and selected chairs, the completed RFP, scoring criteria and ultimately the conditional awards identified at the March 19, 2009 Board meeting.

My understanding is that because of the realignment of the Division of Juvenile Justice and the return of juveniles to originating counties, there is not adequate space in commitment and treatment facilities to manage the increased populations. Therefore, SB 81 funds are intended to provide funding for the construction of local youthful offender facilities.

**15. Previous appointees have voiced concerns about whether adequate resources are available to fully implement these changes. Do you share those concerns? If so, please explain.**

As it relates to facility construction, I am concerned that there are not adequate resources available to fully implement changes related to SB 81. Fourteen counties submitted requests totaling \$232,171,672 of which only \$100,000,000 was available for awards. Only six counties received conditional awards (four full and two partial). Large Counties such as Los Angeles, Riverside and Santa Clara received no awards. Because of the current financial situation, if project funding assistance is not provided to all eligible requesting counties, the positive impact of SB 81 will be minimal at best.

**Grant Administration**

*The authority awards a variety of law enforcement grants.*

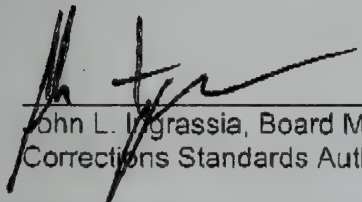
**16. What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?**

The CSA has provides oversight that is consistent with federal and state legislative requirements. CSA staff is tasked with regularly monitoring the programmatic and fiscal aspects of programs in most cases and oversight exists at several stages of program development and implementation.

The CSA is responsible for the review of each county's plan and development of the annual statewide report on legislatively required outcomes. The board utilizes these documents to assess whether or not programs are achieving desired results.

- 17. *Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest in the awarding of grants?***

To protect against potential conflicts of interest during the review and approval of competitive grant processes, CSA Board members and State Advisory Group members must remove themselves from the review, rating, or judging of proposals or situations in which a bias may be perceived. Situations as this have most often occurred when a board member or SAG member's particular employment agency or department have submitted proposals to compete for grant funds. I believe the practice of recusal to be effective and to my knowledge has not compromised the integrity of the rating process.



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John L. Ingrassia, Board Member  
Corrections Standards Authority



*[The page contains extremely faint, illegible text, likely bleed-through from the reverse side. The text is organized into several paragraphs and possibly a list or table structure, but the characters are too light to transcribe accurately.]*

CALIFORNIA LEGISLATURE

MEMBERS

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DARRELL STEINBERG

CHAIRMAN

March 16, 2009

Richard A. Cuneo

Dear Mr. Cuneo:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the California Exposition and State Fair (Cal Expo) Board of Directors on April 29, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by April 6, 2009..

We would also like to receive an updated Form 700, Statement of Economic Interest, by April 6<sup>th</sup>.

**Goals**

Cal Expo is responsible for holding the annual California State Fair, expositions, and exhibitions to highlight various industries, enterprises, resources, and products of the state.

1. *What are your goals and objectives as a director of Cal Expo? What challenges do you see before you as compared to the challenges you faced during your previous tenure? How will you measure your success?*

**Funding for State Fair**

Cal Expo is the state agency responsible for holding the annual California State Fair. Currently, funding for the State Fair (and the 77 county and district agricultural association fairs throughout the state) comes primarily from two sources. First, fairs receive a portion of the revenues generated from various license fees charged by the



state on horse race wagering. Second, each fair generates revenues from admission charges and other fair activities, such as concessions.

Total revenues from state horse race wagering license fees have been on the decline for many years. Between 1996–97 and 2006–07, for example, state collections fell from \$98 million to an estimated \$44 million.

On February 20, 2009, SBX2 16 (Ashburn), a budget trailer bill, was chaptered into law. This bill relieves the horse racing industry from its obligation to fund the fairs from license fees assessed on horse racing wagers, by continuously appropriating \$32 million from the General Fund annually to support the fairs. The bill becomes effective on July 1, 2009.

2. *What portion of the new General Fund appropriation will be allocated to the State Fair? How will this allocation be determined?*
3. *Does Cal Expo have a long-range plan to address how it will spend its portion of the new General Fund appropriation?*
4. *Will the new General Fund appropriation change the way Cal Expo carries out state fair operations? If so, how?*

### **Sacramento Kings Arena**

In early October 2008, the NBA and Cal Expo announced they expected to produce a plan within the next 90 days, after working for several months on a conceptual blueprint for the revamping of Cal Expo into a “village” with modern fairgrounds, arena, housing, office, entertainment, and retail uses. Later that fall, the Cal Expo board voted to extend the term of the current letter of understanding—which guides the actions to be taken by the NBA and Cal Expo for the next phase in the proposed development—until March 31, 2009.

On Friday, February 27, 2009, the Cal Expo board heard testimony from various interested parties—including architects, economists, and local residents—on the master plan for the proposed development. At the end of the meeting, the Cal Expo board agreed to move forward with the project by teaming with the NBA to look for a developer to take on the massive redevelopment project.

5. *How will the board be kept informed of the status of the project?*
6. *Do you believe Cal Expo has adequate staff with the necessary technical ability to effectively “team” with the NBA in looking for and selecting a developer? What role will you, as a board member, play in making this determination?*



Richard A. Cuneo  
March 16, 2009  
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Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:MS

# RICHARD A. CUNEO

March 30, 2009

Ms. Nettie Sabelhaus, Appointments Director  
Office of Senator Darrel Steinberg  
Chairman, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814-4900

Dear Ms. Sablehaus:

Thank you for your recent letter. The following are my responses to the questions:

1. My goals and objectives are to continue to make our California State Fair one of the premier expositions in the nation. Agriculture and its contribution to our economy have been, and will continue to be, an integral part of the viability of California.

In addition, the 700,000 to 1,000,000 attendees to the Fair take away an additional educational opportunity as it relates to our State.

The challenges to our Fair, now versus my previous tenure, continue to be more financial. With the continued contraction of horse racing and the contraction of support that comes from that source, the Fair will have to seek other sources of revenue. In the short eight months I have been on the Board, I have noticed more attention to safety issues at the Fair. It is absolutely imperative that the Fair be a safe place for a family to visit.

In addition, I have noticed aging and lack of preventative maintenance of the buildings. This is, again, a lack of sufficient finances. From my business experience in the private sector, I have concluded that the fair is operated in an efficient manner with the proper administration of the staff at the task at hand.

Success can be measured by achievement of the goals as stated:

- a. Has the Fair improved?
- b. Has the attendance increased? If not, why?

**Senate Rules Committee**

APR 11 2009

**Appointments**

- c. Are the capital equipment and buildings being properly maintained?
  - d. Is it safe with no incidents?
  - e. Is the Fair financially stable into the future?
2. Regarding SBX2 16 (Ashburn) recently chartered into law, Cal Expo has a continuous appropriation of its own funds and has not received any general fund monies for many years. It will be up to the California Department of Food and Agriculture, Division of Fairs and Expositions to determine how much, if any, funds will be allocated to us at the State Fair.

Annually, Cal Expo has received a statutory allocation from the F&E Fund, administered by the division of Fairs, in the amount of \$265,000. That amount goes directly against the annual amount charged to Cal Expo to offset between, \$550K to \$750K in pro-rata charges to be a state agency.

3. We have filed a list of major and deferred maintenance projects that total more than \$45 million that could be started on, if Cal Expo were to receive a substantive appropriation.
4. A change in the way we carry out our day-to-day operations depends so much upon the amount of the allocation to go directly to Cal Expo. We do have much deferred maintenance of buildings that should be attended to.

The current NBA proposal may be an avenue to improve the Fair. This is now being explored and, in my opinion, it is much too soon to determine if this is the correct path to follow. A request for qualifications is now being prepared. Nothing has yet been approved.

5. The Board has been informed and will continue to be informed in a public forum by the Real Estate Committee, two individual Board members selected by the Chair.
6. The present staff has the ability to discuss, with the NBA representatives, the process, and procedures in seeking a qualified developer for this project.

If developers are located that are interested in this project, and there is full commitment by the ownership of the basketball team, then more expertise will be required. The experts will be needed to select a developer, to determine their level of capability to complete the project and continue to protect the interest of the State of California and Cal Expo. In early



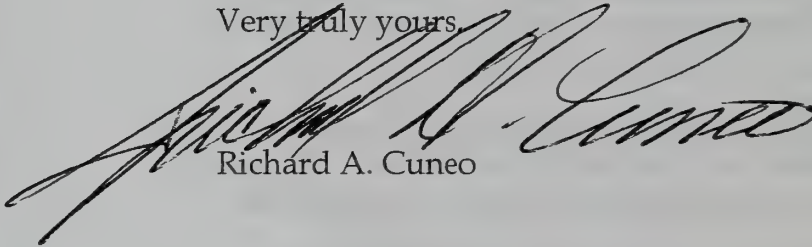
negotiations a law firm was used and they may be required to formalize the negotiations.

The Board chair has selected a Real Estate Committee and they will be involved in the process of locating suitable developers

The staff and the committee all are presently involved in the RFQ process. Once completed, the Board will have to approve the process in order to proceed.

Thank you for the intelligent and insightful questions. I trust that my responses are complete and acceptable. The Form 700 has been completed and will be transmitted to you directly by Cal Expo.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard A. Cuneo", written in a cursive style. The signature is positioned above the printed name "Richard A. Cuneo".

Richard A. Cuneo

Paul (Rick) Stacey  
Responses

March 29, 2009

Senator Darrell Steinberg  
Chairman Senate Rules Committee  
Room 420,  
State Capital  
Sacramento, CA 95814

Dear Senator Steinberg,

I would like to thank you and the members of the Senate Rules Committee for your consideration in confirming my appointment to the Board of the California Exposition and State Fair (Cal Expo), and for the opportunity to answer your questions as to my goals and certain significant issues currently affecting Cal Expo. Please accept the following responses to your questions.

*Goals*

**What are your goals and objectives as a director of Cal Expo? What do you hope to accomplish during your first term? How will you measure your success?**

These are tough economic times for all and Cal Expo is no exception. As current Chair of the Finance and Audit Committee, my first goal is to verify that Cal Expo's financial department has the proper resources in both personnel and systems to accurately and timely report to management and the Board on the current financial health of the organization and project its future financial condition. This reporting is crucial to both management and the Board in carrying out the mission statement of Cal Expo. My remaining objective is to assure that Cal Expo continues to provide a State Fair experience available to all residents of California highlighting the agricultural roots of our State while showcasing its diverse industries and cultures, and to bring this experience at the most economical price possible for those attending.

One of the ways Cal Expo can accomplish this is by generating additional revenues throughout the year from interim events at its extensive facilities. Unfortunately, our forty year old facility has seen alternative, newer venues increasingly competing for these event dollars. In addition, the facility has significant (thirty to forty million dollars) deferred maintenance projects that need to be undertaken to once again make it the world class facility for the state that it should be. Given the limited financial resources available to Cal Expo, an alternative method to either improve or replace our current facilities must be a prime objective over the next four years.

The success of my first term will be measured by the fact that Cal Expo continues to provide the premier state fair experience providing attendees with a view of the state's agricultural, industrial, technological, and cultural diversity, while accomplishing this mission on a sound financial basis. Secondly that a long-

term plan has been developed that assures the updating or replacement of the current Cal Expo facility so that it continues to be a self-sustaining show place for California.

***Funding of State Fair (SB2X 16 – Ashburn)***

*What portion of the new General Fund appropriation will be allocated to the State Fair? How will this allocation be determined?*

*Does Cal Expo have a long-range plan to address how it will spend its portion of the new General Fund appropriation?*

*Will the new General Fund appropriation change the way Cal Expo carries out state fair operations? If so, How?*

At the February 27<sup>th</sup> Board meeting of Cal Expo, the Board was made aware that SB2X 16 was passed providing for a continuous appropriation of \$32 million dollars from the General Fund. It is my understanding that this continuous appropriation will replace annual funding from horse racing license fees to the Fairs and Exposition Fund of approximately \$30 million. Further, that the anticipated amount available to Cal Expo under the new appropriation will be equal to the amount provided under the prior funding (approximately \$265,000). These funds have been and will continue to be used for partial payment of Cal Expo's annual "pro-rata expense".

In order to clarify the status of SB2X 16, and to avoid any confusion, staff will be requested to set this as an agenda item for the Finance and Audit Committee and to update the committee on any potential new appropriation funding.

***Sacramento King Arena***

*How will the Board be kept informed of the status of the project?*

*Do you believe Cal Expo has adequate staff with the necessary technical ability to effectively "team" with the NBA in looking for and selecting a developer? What role will you, as a board member, play in making this determination?*

The Cal Expo Board and management strictly adhere to California's open meeting laws, therefore the February 27<sup>th</sup> meeting was the first time the full Board was presented with any detail of the conceptual plan and summary details worked on by the Board's Real Estate Committee. This open meeting generated much discussion among Board members as to whether to move forward. After much discussion and clarification from the Board's legal counsel, a motion was passed to direct staff to move forward with the preparation of a Request for Qualifications (RFQ). This was done with the understanding that only the preparation of this RFQ was approved and that the actual issuance of the RFQ would require subsequent approval by the Board. This step was taken in order to keep the process moving while the Board was given the opportunity to review the conceptual plan and forward questions through management to the Real Estate Committee.

These questions and responses were reviewed at the March Board open meeting. From the extensive discussion at this meeting, it is obvious that additional dialogue of the full Board is needed while the



RFQ preparation process is undertaken (estimated to be approx. 8 months). I proposed that in keeping with appropriate open meeting laws, each committee submit questions and/or recommendations concerning their committee's discipline through management to the Real Estate Committee. Responses to these questions will then be noticed and covered in future open Board meetings. This process of communication, observation and recommendations of Board members will assure that the full Board is not only kept informed but will also allow each member to provide input into the process.

While no final decision has been made by the Board to formally engage in the development of Cal Expo with the NBA, significant time has been spent in designing the initial concept and layout. Our Cal Expo staff must be commended for the professional and expert work they have done up to this date. However, given the significant size and complexity of this project, Cal Expo has hired expert consultants at certain points to assist both the Real Estate Committee and staff. It is contemplated that the need for such professional assistance will continue in the future both in the preparation of the RFQ and subsequent steps that may be taken. During the process to date the Board has approved both the hiring of such consultants as well as related expenditures. The Board will be reviewing and approving each step in the process as we move forward including the technical skills required and the need for outside expertise to properly accomplish each task.

Again thank you for the opportunity to answers the above questions. Please feel free to contact me if you require clarification or have additional questions. I have enclosed a copy of my current Form 700 Statement of Economic interest. The original was recently mailed to the offices of Cal Expo.

I am honored to serve the State of California as a member of the Cal Expo Board and look forward to being part of the team that works to assure that the Cal Expo continues to provide all the citizens of California a five star facility to showcase all of the State's wonders.

Yours,



Paul (Rick) Stacey

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1801. It is a very important document, as it is the first time that the President has addressed the Congress since the establishment of the office.

2. The second part of the document is a report from the Secretary of the Navy, dated January 10, 1801. It contains information about the state of the Navy and the ships that are in service.

3. The third part of the document is a report from the Secretary of the Treasury, dated January 15, 1801. It contains information about the state of the Treasury and the finances of the government.

4. The fourth part of the document is a report from the Secretary of the War, dated January 20, 1801. It contains information about the state of the War and the troops that are in service.

5. The fifth part of the document is a report from the Secretary of the Interior, dated January 25, 1801. It contains information about the state of the Interior and the land that is in service.

6. The sixth part of the document is a report from the Secretary of the Education, dated February 1, 1801. It contains information about the state of the Education and the schools that are in service.

7. The seventh part of the document is a report from the Secretary of the Agriculture, dated February 5, 1801. It contains information about the state of the Agriculture and the crops that are in service.

8. The eighth part of the document is a report from the Secretary of the Commerce, dated February 10, 1801. It contains information about the state of the Commerce and the trade that is in service.

9. The ninth part of the document is a report from the Secretary of the Marine, dated February 15, 1801. It contains information about the state of the Marine and the ships that are in service.





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HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

--oOo--

WEDNESDAY, MAY 13, 2009

1:45 P.M.

--oOo--

Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

--oOo--

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

--oOo--

WEDNESDAY, MAY 13, 2009

1:45 P.M.

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Reported By: INA C. LeBLANC  
Certified Shorthand Reporter  
CSR No. 6713

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4 SENATOR DARRELL STEINBERG, Chair

5 SENATOR SAMUEL AANESTAD

6 SENATOR ROBERT DUTTON

7 SENATOR JENNY OROPEZA

8

9

STAFF PRESENT

10

11 GREG SCHMIDT, Executive Officer

12 JANE LEONARD BROWN, Committee Assistant

13 NETTIE SABELHAUS, Appointments Consultant

14 BILL BAILEY, Assistant to SENATOR AANESTAD

15 CHRIS BURNS, Assistant to SENATOR DUTTON

16 BRENDAN HUGHES, Assistant to SENATOR OROPEZA

17

18

ALSO PRESENT

19

20 ASKIA M. ABDULMAJEED, Member, Board of Parole Hearings

21 ROBERT CAMERON, Member, Board of Parole Hearings

22 SUSAN C. MELANSON, Member, Board of Parole Hearings

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1 practiced and everything.

2 MS. MELANSON: Don't feel bad. He's my

3 colleague, and I don't say it.

4 CHAIRMAN STEINBERG: I apologize.

5 -- Robert Cameron and Susan G. Melanson, all,

6 again, for confirmation for the Board of Parole

7 Hearings.

8 Good afternoon to all of you.

9 MS. MELANSON: Good afternoon.

10 MR. ABDULMAJEED: Good afternoon, Senators.

11 CHAIRMAN STEINBERG: We have a tradition in the

12 Senate Rules Committee to give the nominees the

13 opportunity to introduce any member of your family, or

14 close friends, or members of your workforce, or anybody

15 else that you want to introduce.

16 MR. ABDULMAJEED: Right to left, or start with

17 him, if it's okay.

18 CHAIRMAN STEINBERG: Of course.

19 MR. CAMERON: I have members here. I'll start

20 with my mother, Shirley Cameron, my mother here.

21 CHAIRMAN STEINBERG: Welcome, Mrs. Cameron.

22 MR. CAMERON: My wife Linda.

23 CHAIRMAN STEINBERG: Welcome.

24 MR. CAMERON: My mother-in-law, Teriko Bradley.

25 CHAIRMAN STEINBERG: Welcome.

2

## PROCEEDINGS

1 CHAIRMAN STEINBERG: Good afternoon. The

2 Senate Rules Committee will come to order. My apologies

3 for beginning the hearing late.

4 If we could please call the roll.

5 MS. BROWN: Senator Cedillo.

6 Dutton.

7 Oropeza.

8 SENATOR OROPEZA: Here.

9 MS. BROWN: Oropeza here.

0 Aanestad.

1 SENATOR AANESTAD: Here.

2 MS. BROWN: Aanestad here.

3 Steinberg.

4 CHAIRMAN STEINBERG: Aye.

5 MS. BROWN: Steinberg here.

6 CHAIRMAN STEINBERG: Thank you. A quorum has

7 been established. We have four gubernatorial appointees

8 appearing today for confirmation, and we want to ask the

9 three nominees to be members of the Board of Parole

0 Hearings to come forward, please. We will take them all

1 at once.

2 Askia M --

3 MR. ABDULMAJEED: Abdulmajeed, sir.

4 CHAIRMAN STEINBERG: -- Abdulmajeed. I

1

1 MR. CAMERON: My father-in-law, Greg Bradley;

2 my son, who thought it would be a good educational

3 opportunity to show up.

4 CHAIRMAN STEINBERG: Welcome, young man.

5 MR. CAMERON: My father John; my brother

6 Stewart; my daughter Channel; friend of the family,

7 Christine Rodrigues; and a friend of mine in the back,

8 Bobby Evans.

9 CHAIRMAN STEINBERG: I'm impressed. Very good.

10 Very good. Thank you.

11 MR. CAMERON: You're welcome.

12 MS. MELANSON: Being from the south --

13 CHAIRMAN STEINBERG: You're going to need to

14 share the microphones.

15 MS. MELANSON: You got it.

16 Being from the south, I didn't bring the whole

17 family; but I do have a daughter in the audience here,

18 in the white blouse, Shelly, and I'm pleased to

19 introduce her today.

20 CHAIRMAN STEINBERG: Welcome. Welcome to you.

21 MR. ABDULMAJEED: That's a hard act to follow

22 from both my colleagues.

23 My wife was going to come, but, like my last

24 confirmation hearing, she was too stressed out to be

25 here because she would stress me out, so....

3



1 (Laughter.)  
2 CHAIRMAN STEINBERG: Maybe she's watching on  
3 television at home.  
4 MR. ABDULMAJEED: Maybe.  
5 CHAIRMAN STEINBERG: Very, very good. All  
6 right. I want to give you each the opportunity to give  
7 a brief opening statement as well in terms of -- to give  
8 us a sense, really, of how you see your job, and how you  
9 approach these cases, and a little bit about why you  
10 want to be confirmed for this very important position --  
11 positions.  
12 Sir, Mr. Cameron.  
13 MR. CAMERON: All right.  
14 Honorable Chairman, Senators, Committee Members  
15 and staff, thank you for giving me the opportunity to  
16 appear before you today. I am honored to be here, and  
17 I'm grateful that you have found the time to consider my  
18 appointment.  
19 While I have a wide range of experience to pull  
20 from, I believe that my own life experiences personally  
21 and professionally prepared me for the responsibility to  
22 determine youth suitability for parole. I'm honored to  
23 serve the community in this capacity.  
24 I was honored and gratified when I was first  
25 nominated. I find a sense of gratification to see the

4

1 rebirth, if you will, of troublesome youth who have  
2 gained new insight into their crimes and how those  
3 crimes have impacted their victims and the community as  
4 a whole.  
5 At that time -- or at the time, I equally  
6 understand the importance of making sure that those  
7 wards still considered to be a risk to public safety  
8 continue to receive treatment and training necessary to  
9 help them gain the insight necessary to be considered  
10 for parole.  
11 And, again, I thank you for your consideration.  
12 CHAIRMAN STEINBERG: Thank you very much.  
13 MS. MELANSON: My background has been, for the  
14 past three decades or so, child advocacy. It started  
15 with a volunteer group that was actually international,  
16 helping children who were victims of sexual assault and  
17 their families to get through referrals to counseling,  
18 everything from that to the court process itself.  
19 And from there I moved into -- I moved into  
20 kind of the political arena and worked as a field  
21 representative for a county supervisor in San Bernardino  
22 County for 12 years, and during that time I was the  
23 in-house specialist for children and families at risk,  
24 again, because of my background.  
25 From there I went to Children's Network, who is

5

1 the interagency council for San Bernardino County where  
2 I oversaw all of the external collaborations with  
3 community-based programs; and the Child Abuse Prevention  
4 Council I chaired for our county and was involved in the  
5 state child abuse prevention level as well. During that  
6 time, I wrote a grant and was approved for that grant  
7 for a five-county regional child review team, and we did  
8 some great work with the five counties in the south, and  
9 that was very eye-opening.  
10 And from there I came into this position, and I  
11 find that my background, however varied it is, that I  
12 have worked with all kinds of organizations. It serves  
13 me well. And many, many of the youth in our system  
14 today in DJJ come from an abusive background, and I  
15 always at the beginning of a hearing look at that  
16 history to see how they come into the criminal justice  
17 system and those kinds of things. So all of that  
18 background serves me in this position.  
19 I'm privileged to have the position and take  
20 public safety very seriously and the success of the  
21 youth that we're serving as important. So thank you,  
22 Chair and Members of the Senate here today, for  
23 considering me for confirmation.  
24 CHAIRMAN STEINBERG: Thank you.  
25 MR. ABDULMAJEED: Okay. Senator Steinberg and

6

1 other Honorable Members of the Senate Rules Committee, I  
2 began my state service in 1991 at the Department of  
3 Alcohol and Drug Programs by appointment of Governor  
4 Pete Wilson where I served as the deputy director of the  
5 communities, families, and youth and children's division  
6 of the department, working with mentoring programs,  
7 substance abuse programs, the drug-free school zones  
8 issues, always with emphasis on youth.  
9 After eight years of that -- During that period  
10 of time, I also served and helped to structure the  
11 California Mentoring Initiative for the California Youth  
12 Authority at that time. And since then -- When that  
13 time ended, I went back to the private sector, was very  
14 active in the faith community working with young people,  
15 and I think that's where I encountered you at on a  
16 couple of occasions, Senator Steinberg.  
17 And also, last but not least, five years as a  
18 correctional chaplain where I worked to guide men back  
19 to faith and back to families, and tried to help them to  
20 be placed back in the community if they had shown some  
21 rehabilitation and redemption in God as well as in  
22 society.  
23 CHAIRMAN STEINBERG: Thank you all very much.  
24 I'll open it up with a couple of questions.  
25 Numbers sometimes don't tell the whole story,

7

1 and that may be true in this instance as well, but I  
2 would ask you all to comment on the following.  
3 Mr. Abdulmajeed --  
4 MR. ABDULMAJEED: Yes.  
5 CHAIRMAN STEINBERG: -- your grant-to-denial  
6 percentages --  
7 MR. ABDULMAJEED: Yes, sir.  
8 CHAIRMAN STEINBERG: -- in 2008 and the first  
9 quarter of 2009 were 84 to 16.  
10 MR. ABDULMAJEED: Yes, sir.  
11 CHAIRMAN STEINBERG: Mr. Cameron, yours were  
12 97-3. Ms. Melanson, you were 72-28 in terms of grants  
13 versus denials.  
14 Are we to make anything out of that?  
15 MS. MELANSON: The significant difference  
16 between mine and there's?  
17 CHAIRMAN STEINBERG: Correct. Either way.  
18 MS. MELANSON: Okay. Part of the number of  
19 mine being higher is that I work in the south, and we  
20 have Heman G. Stark, which houses the 18 to  
21 25-year-olds, and in that range we've got a lot of  
22 hardcore gang members that just have a more difficult  
23 time coming up and getting through the treatment  
24 necessary, and so a lot of times we will deny them on  
25 their first run.

8

1 It's not anything that's -- you know, I can't  
2 explain it. You know, like you say, numbers don't say  
3 the whole thing, but that would be where the significant  
4 changes for my numbers would be, at Heman G. Stark.  
5 MR. ABDULMAJEED: For me, I can't speak to the  
6 difference in the percentages or the denials or grants  
7 of parole, but I will say this: That every single  
8 hearing is adjudicated on its own merits, and the  
9 process remains the same. We look at the youthful  
10 offender's committing the offense and his degree of  
11 acceptance of his participation and level of  
12 participation in that offense, whether it's minimal or  
13 significant; we look at his participation or lack  
14 thereof in the institutional setting, whether or not he  
15 has shown a change, a positive value system, and whether  
16 or not he's prepared himself to earn his way out of the  
17 system that he earned his way in through his negative  
18 behavior.

19 This is the dynamic that is most significant in  
20 us determining suitability for parole, not so much a  
21 numbers construct. I mean, basically, I don't keep  
22 score. And I'm not being flippant. But when I sign my  
23 name to a board order, what I hope is that each and  
24 every one of those young people will come back into your  
25 community and mine and be successful and not return to

9

1 the system. That's not always the case, but I really  
2 don't keep up with how many.  
3 But I can tell you this: The high point for me  
4 as a commissioner is for someone to come in who has got  
5 his GED now, who hasn't had any fights, who has A double  
6 status and has been a perfect prisoner, so to speak, and  
7 has prepared himself to the extent that we accept that  
8 he's parole-ready, and to be happy and elated when he  
9 leaves, and his family's there in tears, and he leaves  
10 and goes back home.

11 But then the low point, Senator, I have to  
12 confess, is when I look up and I see that same person  
13 again in a revocation hearing for recommitting a similar  
14 offense.

15 MR. CAMERON: I would agree. I believe my  
16 colleagues have pretty much hit it right on the nail --  
17 or head, rather. We are dealing with a little more of a  
18 younger ward up here in the north. I have not had the  
19 opportunity to get down south; but looking at my  
20 schedule, I will have the opportunity to go down there  
21 in June for a week.

22 And, again, I believe that the wards -- at  
23 least the ones that I have paroled -- have bought into  
24 the program and, you know, have decided they want to go  
25 home, and they tend to buy into their program.

10

1 CHAIRMAN STEINBERG: Okay. Do you view  
2 yourself as impartial judges or as advocates for better  
3 programming and treatment for the young people whose  
4 fate you, in part, are responsible for?

5 MS. MELANSON: May I answer first?

6 MR. ABDULMAJEED: Sure.

7 MS. MELANSON: Well --

8 CHAIRMAN STEINBERG: I knew that would be the  
9 answer.

10 MS. MELANSON: When a youth comes before any  
11 hearing officer and there's something missing in their  
12 treatment, I haven't seen a hearing officer that doesn't  
13 address that and take it to the appropriate level. That  
14 could be just talking to the treatment team about  
15 something that we think is missing.

16 Recently, I had -- we were just doing an annual  
17 review, and the ward was on suicide watch, so he didn't  
18 come in for his annual review. And this particular  
19 hearing is actually an institutional committee hearing,  
20 but we sit in an advisory capacity. And in looking at  
21 the file during the hearing, I noted that he had seen me  
22 sometime before that and that at that time he had come  
23 close to parole consideration hearing and was suicidal  
24 before.

25 So I asked the psychologist present to take a

11



1 close look at that and find out if this ward is  
2 sabotaging his parole opportunity, because they will do  
3 that when they're scared. So there are a lot of  
4 different ways to measure.

5 CHAIRMAN STEINBERG: Okay. And what you just  
6 described, which I think is very positive, is how you  
7 have been an advocate for treatment in a given case  
8 before you.

9 MS. MELANSON: Right.

10 CHAIRMAN STEINBERG: My question, actually, is  
11 a little broader.

12 For example, have any of you gone to talk to  
13 Matt Cate or anyone in the governor's office about, for  
14 example, the situation at Preston where the only drug  
15 treatment program is so-called journal therapy, and,  
16 frankly, the lack of adequate services for the young  
17 people that you are putting back into society?

18 MS. MELANSON: Yes, yes. When we see that, I  
19 will frequently send the information -- If I see  
20 something lacking, I will forward that to our executive  
21 officer, and he forwards it to the appropriate director.

22 We also have the privilege of having Deputy  
23 Secretary Werner in our board meetings frequently, and  
24 we are able to address any shortcomings that we might  
25 see. To that end, we all advocate for the wards.

12

1 looking at, I believe, committing those to every  
2 institution that we have.

3 SENATOR OROPEZA: Can I step in there on that  
4 one?

5 CHAIRMAN STEINBERG: Sure. Take it over.

6 SENATOR OROPEZA: But isn't it true there's  
7 only nine participants right now at the program at  
8 Preston?

9 MR. CAMERON: Well, there's 18. There's nine  
10 that go through at a time, and there's also nine more  
11 waiting in the wings going through, like, a pre-program.

12 SENATOR OROPEZA: So only nine young people go  
13 through the program at a time?

14 MR. CAMERON: Actually, it's broken up into a  
15 couple of modules. It's actually 18. But nine are  
16 going through intensive training, and then 18 -- excuse  
17 me -- the other nine are in a pre-training type of deal.

18 SENATOR OROPEZA: All right.

19 Mr. Chair, may I ask a couple of questions?

20 CHAIRMAN STEINBERG: Go. Go, go, go, please.

21 SENATOR OROPEZA: Mr. Cameron, I'm going to ask  
22 you, but I'll ask all three of the applicants, but we're  
23 right here close together, so I'll ask you first.

24 MR. CAMERON: Sure.

25 SENATOR OROPEZA: Do you think from where you

14

1 Absolutely.

2 I consider myself impartial, because I don't  
3 care what their history is. I don't care what their  
4 crime is. We have to have an open mind. We would not  
5 be good at this job if we didn't believe in the youth  
6 today.

7 CHAIRMAN STEINBERG: How many op-eds have any  
8 of you written for local newspapers about the need for  
9 greater treatment?

10 MS. MELANSON: I have never written one.

11 MR. CAMERON: I have never either.

12 CHAIRMAN STEINBERG: Been on any cable TV  
13 shows?

14 MR. CAMERON: Not lately.

15 CHAIRMAN STEINBERG: I mean, that's a serious  
16 question.

17 MR. CAMERON: No, I have not. But I would like  
18 to clear something up here. There is a drug program at  
19 Preston, and it's about three months old, and it's a  
20 formal drug treatment program. When I started back last  
21 July, there wasn't. And, you're right. It was just  
22 journaling. But I came onto the board at the time the  
23 change was taking place, so I have had opportunity to  
24 see what the program was like then and what it is now,  
25 and there is a formal drug program. In fact, we're

13

1 sit in terms of making some judgments about the  
2 appropriateness of parole for a young person, do you  
3 feel that there are sufficient programs within the  
4 system to prepare them?

5 MR. CAMERON: I do.

6 SENATOR OROPEZA: You do.

7 MR. CAMERON: I do. I do. I think the  
8 programs are great. What it is, is that the ward has to  
9 make a decision, has to buy into his own program. And  
10 this has to be, I would say, helped to see the benefits  
11 of those programs. And our hope is to help them put  
12 themselves in the situation where -- or gain some  
13 insight so he can ultimately be released back into the  
14 community.

15 SENATOR OROPEZA: Okay. So you think they're  
16 sufficient?

17 MR. CAMERON: I do.

18 MS. MELANSON: I would say there's never enough  
19 programs, but this is my third year in this position,  
20 and so I've been here long enough to see some  
21 significant change. And I'd say the most significant  
22 change to those programs has come in the last six months  
23 or so, and I really see us moving into a much stronger  
24 area where the youth will be required to go to school.  
25 You would be amazed how many of them say, "Do I have to

15



1 go to school?"

2 SENATOR OROPEZA: No, I wouldn't be amazed.

3 MS. MELANSON: We all have kids, right?

4 But many of them don't want to go to school,  
5 but it's going to be an expectation. And they're not  
6 going to be able to get out of it by saying, "No, I  
7 can't go out there."

8 SENATOR OROPEZA: And currently that's the  
9 case?

10 MS. MELANSON: That has been the case, but  
11 we've just recently seen the implementation of the new  
12 day scheduling, and it requires that they go to school.  
13 None of their other programs are allowed to interfere  
14 with that educational time, and all the other programs  
15 must be accomplished within the extra hours, not the  
16 school hours.

17 So those kinds of changes are very heartening  
18 for me, and I believe that we're finally coming to a  
19 place where we're using consistently evidence-based  
20 programming, and I think we're going to see significant  
21 improvement over the next year.

22 SENATOR OROPEZA: And finally Mr. --

23 MR. ABDULMAJEED: My response to that is  
24 that while I am an absolute consistent irritant along  
25 with advocate for increased programming for our wards

16

1 and youthful offenders, I do feel that what we have  
2 today is adequate for a young person if they have the  
3 right A, B, Cs, and that is attitude, behavior, and  
4 consequences, in their mind when they are in the  
5 program.

6 Some young people thrive in the programs;  
7 others do not. The ones that are received -- increase  
8 the amount of time extensions are the ones that are  
9 gang-entrenched, and their attitude and their behavior  
10 and their disruptive nature, the way they act out for  
11 their gangs and things of that nature, is compared to  
12 the other young people who are A level, who have  
13 completed their GED and a high-school diploma in the  
14 same period of time in the same institution but with a  
15 different A, B, C, attitude, behavior, consequences.

16 SENATOR OROPEZA: And what role do drugs and  
17 drug treatment play a role in this whole dynamic,  
18 because you said the A, B, Cs, which sounds great, but  
19 if you're an addict, your attitude might not be so  
20 great.

21 MR. ABDULMAJEED: I'll try and address that for  
22 you.

23 As a former deputy director in the Department  
24 of Alcohol and Drug Programs, I understand well the  
25 pharmacology of addiction. It is a chronic relapsing

17

1 condition. The drug-treatment programs that are there,  
2 I once had the opportunity to consult those programs and  
3 to make certain that they were up to snuff in terms of  
4 what was being offered and being given in the community  
5 would be the same types of programs that they would  
6 experience within the institutional setting. And I do  
7 feel that --

8 SENATOR OROPEZA: You found that was the case,  
9 that they were similar? They were equitable in terms of  
10 the value to the individuals?

11 MR. ABDULMAJEED: Yes.

12 SENATOR OROPEZA: Can you speak for particular  
13 sites or -- Which sites do you work out of, sir?

14 MR. ABDULMAJEED: Primarily, I work in the  
15 north, Northern California. That would be O.H. Close,  
16 Preston also, no longer DeWitt Nelson; but also with  
17 Chaderjian, N.A. Chaderjian, the Pine Grove Youth Camp,  
18 where our young people were recently on the front line  
19 in the fires in Southern California. So primarily in  
20 those four areas.

21 SENATOR OROPEZA: The rest of you, can you tell  
22 me where you work out of?

23 MS. MELANSON: Yes. I'm Southern California.  
24 I work largely at Heman G. Stark, at the southern clinic  
25 and reception center; Ventura, which is the Ventura

18

1 Youth Correctional Facility where all the girls are  
2 housed; and -- I'm trying to think is that all of them.  
3 And then, you know, we do a lot of hearings in the  
4 county jails and such as well. So all the way from the  
5 Mexican border to Arizona.

6 SENATOR OROPEZA: And Mr. Cameron?

7 MR. CAMERON: I work primarily Northern  
8 California, you know, Chaderjian, O.H. Close, Preston,  
9 Pine Grove, and I also work county jails as well, but I  
10 have gone down as far as Tehachapi.

11 I haven't had the opportunity to go down south  
12 yet; but, according to my schedule, June I'll be going  
13 down to Southern California for a week.

14 SENATOR OROPEZA: What do you think of the role  
15 of job preparedness? What is the appropriate role for  
16 the system in terms of job preparedness, and how do you  
17 factor that into your decision to parole or not to  
18 parole, if at all?

19 MR. ABDULMAJEED: I believe it's extremely  
20 important, because if we put together a program that has  
21 a construct in it where once the young person completes  
22 it, we have placed an insurmountable barrier between him  
23 and civil society by not having enough programming for  
24 him that he will be able to compete in the community for  
25 a job, even in a downturn such as we have now. I

19

1 believe that it's adequate as it stands, but the  
2 emphasis cannot be -- cannot be greater stress, because  
3 if a young person leaves with that GED and has no job  
4 skills -- Some of them come out with auto mechanic  
5 skills and certificates; some of them come out with  
6 skills as simple as gardeners or people who do that type  
7 of work; some of them come out as welders; some of them  
8 come out -- now they have a program where they can come  
9 out as people who have worked with animals and shown  
10 empathy to refurbish those animals and bring them back  
11 to productive use in society.

12 There's a number of ways in which -- and areas  
13 in which they come out now more prepared to go back to  
14 society and to be able to have meaningful employment.

15 SENATOR OROPEZA: While you're speaking, I want  
16 to ask you a question which was prompted by part of your  
17 opening remarks.

18 MR. ABDULMAJEED: Okay.

19 SENATOR OROPEZA: And it has to do with faith.

20 MR. ABDULMAJEED: Faith, yes.

21 SENATOR OROPEZA: I'd like to ask you, because  
22 you mentioned in your opening remark the issue of these  
23 young people demonstrating or having some kind of faith  
24 as -- you know, that that's an important element.

25 Can you talk to me a little bit more about how

20

1 renounced the gang and is coming to service and helping  
2 the chaplain in the ministerial services on a Sunday,  
3 for example, as a Catholic chaplain, and that person now  
4 becomes a quasi-support and minister to other young  
5 people that are interested in faith as well. I see that  
6 as a positive. I don't see it as a negative. But I  
7 don't see it as a necessity in order to be parole  
8 suitable.

9 SENATOR OROPEZA: Okay. I see it in that way  
10 too. My particular concern would also be around the  
11 choice --

12 MR. ABDULMAJEED: I've seen the opposite as  
13 well.

14 SENATOR OROPEZA: -- the choice of religion.  
15 And when you start inserting religion into a government  
16 process, it gets very touchy and sometimes  
17 inappropriate. So you would say -- Tell me if I'm  
18 speaking accurately for you. You would say that it is  
19 preferable but not required?

20 MR. ABDULMAJEED: No. I wouldn't even say  
21 that. I would say the subject doesn't come up at all --

22 SENATOR OROPEZA: It doesn't come up unless  
23 they bring it up?

24 MR. ABDULMAJEED: What I'm saying is it doesn't  
25 come in our adjudication process to determine whether or

22

1 you factor that into your decision on whether or not to  
2 parole somebody and --

3 MR. ABDULMAJEED: I didn't say that, but I'll  
4 speak about it.

5 SENATOR OROPEZA: I want you to talk about it,  
6 because if that's your judgment, that folks, in order to  
7 be successful, need to have, you know, strong faith --  
8 and I personally agree with that.

9 MR. ABDULMAJEED: Really.

10 SENATOR OROPEZA: I think it's very important,  
11 but I don't know if the system --

12 Tell me what your thoughts are.

13 MR. ABDULMAJEED: Okay. My thoughts are this:

14 If a young person has adopted a faith path, then it may  
15 be for him something that would motivate him above and  
16 beyond the normal motivation a young person might have  
17 in the community, because of the faith, the  
18 understanding, and the obedience, once they have the  
19 understanding and that faith as the foundation.

20 However, it is not a panacea for success in the  
21 institutional setting or outside of it. But when we  
22 have our hearings, often you will find the chaplains  
23 will come as someone who will set forth how this person  
24 has been faithfully attending services and is now  
25 someone who was gang-involved and has stepped away and

21

1 not this person is safe to parole unless they bring it  
2 in. It's not something that we are trained through  
3 Title 15 to go after and determine whether this youth or  
4 that youth has adopted a faith path. That's not there.  
5 If it's brought up, then we'll explore it, if the youth  
6 brings it up. Other than that, we don't discuss it at  
7 all.

8 SENATOR OROPEZA: Thank you very much.

9 MR. ABDULMAJEED: Thank you.

10 CHAIRMAN STEINBERG: One more area that I would  
11 like to ask about is the reality that since lower-level  
12 offenders are essentially handled locally, you're  
13 dealing with the most serious offenders. What  
14 percentage of those offenders, in your experience, live  
15 with serious mental illness? And do you believe and is  
16 it your experience that you have sufficient linkages in  
17 terms of programming for people -- young people you  
18 parole to get the mental-health services and treatment  
19 that they need?

20 MS. MELANSON: I can't really give you a  
21 percentage, but if for no other reason, because of the  
22 youth's background in drugs, many times there is  
23 certainly mental-health concern. And when they are  
24 appropriately under mental-health treatment in the  
25 facilities, when they come before us we're going to have

23



1 a treatment summary or some kind of report telling us  
2 where they're at.  
3 When we see any youth that appears to need some  
4 mental-health counseling, it is something that we do  
5 make note of and....

6 CHAIRMAN STEINBERG: "Make note of" is  
7 different from whether or not it is your experience that  
8 there is sufficient -- use the term of art "wraparound  
9 services," or "comprehensive services," to be able to  
10 ensure the mental health or better mental health for  
11 people who are paroled.

12 MS. MELANSON: Can we do better? Absolutely.  
13 Wraparound services is what would be perfect. That  
14 would be the ideal standard.

15 CHAIRMAN STEINBERG: What's lacking?

16 MS. MELANSON: Today I don't believe we have  
17 wraparound. I do believe that there's good  
18 mental-health treatment available. I don't know that  
19 everyone that needs mental-health treatment is  
20 identified. So our role in the first annual review,  
21 when they're just there for a year, is to look for that  
22 kind of thing and see if it's missing. And if we see  
23 it's missing, we address it during those meetings.

24 CHAIRMAN STEINBERG: Okay. And I don't doubt  
25 that, but it is my impression that -- based upon my own

24

1 experience and review -- that there are insufficient  
2 numbers and amounts of mental-health services out in the  
3 community. We know that. So how do you deal with that  
4 reality? And do you experience significant frustration  
5 because you cannot refer wards, parolees, to programs  
6 that you have confidence in?

7 MS. MELANSON: Well -- excuse me. At every  
8 parole hearing over the last five or more months, I have  
9 put a condition on every parolee to have mandatory six  
10 months' individual counseling, because I want them to  
11 have that support as they step out.

12 There are a lot of different paths for a  
13 parolee to enter mental-health counseling, and some of  
14 the communities have a lot of programming and some of  
15 it's very good. Some of the communities that I worry  
16 most about would be the rural -- central California  
17 rural communities where they don't have as many  
18 services. And at that point we can order it, and parole  
19 will have to find the way to deliver it, and that's my  
20 intent with that counseling, is for support. And if  
21 they need mental-health counseling, it's going to be  
22 identified in that six-month mandatory period. So  
23 that's one way I'm dealing with that.

24 It's --

25 CHAIRMAN STEINBERG: Wait, wait, wait. I want

25

1 to hear from Askia.

2 MR. ABDULMAJEED: The dynamic unfolds in this  
3 way, Senator Steinberg: At our hearings, the wards --  
4 the ones that have been assessed with mental-health  
5 needs, they come forth with a cadre or a battery of  
6 clinicians, a psychologist, a psychiatrist, a treatment  
7 team supervisor, a social worker, and, of course, a  
8 casework specialist.

9 All of these people work in various ways with  
10 that young person to make certain that if he's  
11 medication compliant or not, if he's responding to the  
12 treatment protocols that exist within his mental-health  
13 program, and what those needs will be on the outside in  
14 terms of how much medication that he should have when  
15 he's released to serve him good in those first 30 to  
16 90 days, and whether or not there are any services for  
17 him once he leaves the institutional setting.

18 But when he comes to the hearing, he has  
19 adequate support and the ability to basically  
20 regurgitate to the board about his treatment and whether  
21 he feels it's been adequate for him and that he's stable  
22 or not. That's what we have.

23 MR. CAMERON: And for me, being new to the  
24 board, I do rely on the treatment team heavily; but I do  
25 take the opportunity during the first annual reviews to

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1 look to see what -- the treatment that was ordered. And  
2 if I feel that there should be a psych report ordered, I  
3 will take the opportunity at that time to go ahead and  
4 order that report. That's the way I've been doing it.

5 Go ahead.

6 CHAIRMAN STEINBERG: Go ahead.

7 SENATOR OROPEZA: After that line --

8 CHAIRMAN STEINBERG: No, no, no. The  
9 conversation I think sort of begs the earlier point that  
10 I was trying to make through some earlier questioning,  
11 which is whether or not you see your job as it's defined  
12 by the statute, which is fine and appropriate as far as  
13 it goes, or whether or not you see yourself as a -- use  
14 whatever term you want, an advocate/activist for more  
15 and better services for these young people, because I  
16 know for a fact that the services are insufficient out  
17 in the community. And you can make any order you want  
18 to make, but I certainly don't have the confidence that  
19 there's the right kind of linkage between what you're  
20 required to do and what the follow-up actually is to  
21 reduce the risk that these young people will come right  
22 back to your system.

23 MR. ABDULMAJEED: I agree with you that many of  
24 the young people that come to us are fragmented at the  
25 family level, broken in terms of the community, and that

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1 their inner landscapes are dotted with broken dreams.  
2 And this is what we have to deal with in terms of  
3 finding if they're suitable to come back into society  
4 and safe to parole or not.

5 However, I must agree with you that the  
6 services that currently exist would be -- could be  
7 augmented with additional services, and I think the  
8 result would increase the ability and stability of the  
9 young people in our system. I agree with that.

10 MR. CAMERON: You know, if I may add, one of  
11 the things that I do when I am at a probable cause  
12 hearing and I see that a ward has absconded from a group  
13 home or program, I always ask them how they feel about  
14 that program, whether they saw any problems. I try to  
15 get a feel for, you know, the services of that program  
16 as far as adequacy was or is.

17 I have just recently started to tour some of  
18 these outside services, like the group homes, some of  
19 the substance-abuse programs, because I wanted to get a  
20 feel myself for where the ward was going, because  
21 placement is super, super important when you're paroling  
22 a ward. You want to make sure -- I know for me I want  
23 to be comfortable with the fact that I know he's going  
24 somewhere where he's going to receive good services.

25 CHAIRMAN STEINBERG: Thank you.

28

1 Sometimes a youth will come in and talk to us  
2 at their annual review because they're really proud  
3 about what they've accomplished. Most times it's a  
4 nonappearance, but it's an opportunity for us to see how  
5 they're doing.

6 So we are able to see at times, not  
7 infrequently, that a youth that we've paroled is doing  
8 well, is participating in all of the treatment, is going  
9 to college, is employed part-time. It really is nice to  
10 play a small role in that youth's life.

11 The other way is I would like to leave the  
12 parole board, the juvenile board, a little bit better  
13 when I leave than when we arrived. We're currently  
14 working on creating policies and procedures for the  
15 parole board that didn't exist before, so --

16 SENATOR OROPEZA: Like what?

17 MS. MELANSON: Just policies and procedures  
18 that are in writing, that are a document that you can  
19 hold and review and follow-up. And I'm on the committee  
20 that's working on those. And once we get those in place  
21 and they're adopted, I really believe that the board  
22 members coming in will have a little better guideline  
23 and will have some things in writing that didn't exist  
24 three years ago.

25 SENATOR OROPEZA: Is that part of your advocacy

30

1 Senator Oropeza.

2 SENATOR OROPEZA: How would each of you define  
3 success?

4 MR. ABDULMAJEED: Success for me would be a  
5 young person in terms of -- My work in this area would  
6 be a young person who comes back to the community and is  
7 not a perfect person, but is someone who now understands  
8 his own ability to look at his behavior and to be able  
9 to make better decisions about that behavior and to be  
10 able to now sense the true value of his biological  
11 family, because in the gangs he was in a street family.  
12 That person increasingly knows of their humanity and  
13 their ability to strive for excellence in their  
14 community, in their family, and in society. That's how  
15 I would define success, and that's why I put my name on  
16 that board audit to parole so many young people.

17 SENATOR OROPEZA: I would like to hear from  
18 each of you.

19 MS. MELANSON: I would define it by having a  
20 positive impact on some of these young people's lives  
21 and being able to see some change.

22 We do do annual reviews at the -- it's called  
23 calendar, where we go to the parole offices and we do  
24 annual reviews and just kind of administrative types of  
25 things.

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1 of the position that gang members should not be paroled  
2 back into their neighborhood?

3 MS. MELANSON: That would be one of mine. May  
4 I expand on that?

5 SENATOR OROPEZA: Yes, please. And you might  
6 want to comment on the issue of family as a support in  
7 that context.

8 MS. MELANSON: Certainly, certainly.

9 There are different scenarios that the youth  
10 come from when they come in from DJJ. They've already  
11 been through probation, and the court has finally said,  
12 "We can't deal with you locally, you're a threat to  
13 public safety, so you're going to go to the state  
14 system."

15 When they come in, I find there's two tracks.  
16 There's the track where they were victims of abuse and  
17 neglect. They were through foster home after foster  
18 home, and they turned to the gangs as someone who  
19 would care, just getting their own support system.

20 The other track is: This is where the family  
21 is from. And that's the hardest track for us as board  
22 members to deal with at a parole hearing, because what  
23 do you do? Send them back to the same neighborhood?  
24 I'm not talking about another county. I'm talking about  
25 neighborhoods.

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1 SENATOR OROPEZA: Yeah, I understand. I  
2 understand.  
3 MS. MELANSON: And so my goal is to keep them  
4 out of the neighborhood that's going to pressure them  
5 right back into the same behavior that we've seen them  
6 work toward, you know, leaving behind. And if you put  
7 them back in the same neighborhood where that gang is  
8 there every day calling them back, in my mind, we're  
9 setting them up to fail.  
10 SENATOR OROPEZA: Would that apply to both of  
11 the two tracks or just the track where the family is --  
12 it's a family tradition, so to speak?  
13 MS. MELANSON: Where it is a family tradition,  
14 is where I take that position.  
15 SENATOR OROPEZA: Okay. All right. That makes  
16 me feel more comfortable.  
17 MS. MELANSON: No. We have a lot of guys that  
18 have good family support today that didn't then.  
19 SENATOR OROPEZA: Okay. All right,  
20 Mr. Cameron. You always end up at the end of the row.  
21 Next time you can answer first.  
22 MR. CAMERON: I'm the baby on board, so to  
23 speak.  
24 One of the ways that I gauge success is the --  
25 When I go to the parole offices and do the annual

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1 reviews, it gives me an opportunity to see wards that I  
2 have paroled in some cases, how they've been doing.  
3 Parole gives me a picture for that entire year, that  
4 reporting period, you know, how that ward has been  
5 doing.  
6 The other way is honorable discharge. I'd  
7 really, really like, you know, and suggest to anyone  
8 that can, come and sit with us on the board when we have  
9 an honorable discharge. These kids, when they talk  
10 about the programs that they got or that they took  
11 advantage of while they were on parole, it does your  
12 heart good to see them with college degrees. They're in  
13 the community running businesses; they are married,  
14 having children, you know, just have turned their life  
15 around. And just to hear them talk about their  
16 experience with the Youth Authority and how the  
17 Youth Authority and maybe even words spoken to them by  
18 board members helped turned their life around.  
19 Can you reach everybody? No. But you can  
20 reach a lot of them just by taking an interest in what's  
21 happened to them and making recommendations that can  
22 help them succeed in life.  
23 SENATOR OROPEZA: Okay. One more question.  
24 How do you reconcile, then, the remarks that you all  
25 have made today about how the system is working, that

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1 treatment is at least sufficient or adequate? You know,  
2 we're warmed by the good work in terms of when we see  
3 those positive outcomes, and you all are able to  
4 recommend parole. How do you reconcile that with -- you  
5 know, you have 6,076 case hearings a year -- no, you  
6 don't. No, you don't. Total hearings. Total hearings,  
7 parole cases, and only 3,400, yet you have over 2,000  
8 revocation hearings as well. So how can we say that  
9 this is a success experience? And shouldn't there be  
10 some measures, some outcome measures, that look at what  
11 I think is success?  
12 I would define success in a more global way,  
13 but you took it to the child, which I think is great,  
14 but I would define a successful system as one that does  
15 not have that level of repeat -- potential repeat  
16 offenders. And I know not all of those are revoked, but  
17 can you talk to that a little bit?  
18 And Mr. Cameron, if you want to talk first, I  
19 would say you could, and if you don't, you get the right  
20 to pass to your right. Whatever you would like to do.  
21 MR. CAMERON: Okay. I will pass to my right.  
22 MS. MELANSON: Well, a couple of things come to  
23 mind. You acknowledged not all of those were revoked,  
24 and that's true. You know, we have a lot of  
25 circumstances for bringing youth back before us for

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1 revocation hearings. And some of those are very serious  
2 new law violations, and some of those are strictly  
3 parole-condition violations. And there's a big  
4 difference in those things.  
5 When it's a serious law violation, nobody  
6 sitting at this table is going to say that we do  
7 anything but bring them back, if they're not already in  
8 jail, in order to protect public safety. I mean, that  
9 is our first charge.  
10 But many times, as was mentioned earlier, drugs  
11 are very difficult to overcome. And we're talking young  
12 people here who in their early 20s fall back into drugs  
13 and manage to find themselves in situations where they  
14 aren't necessarily criminal, but we're real concerned  
15 about what would have happened. So at that point, the  
16 best thing for us to do is to bring them back for  
17 further treatment and training. And that shows up as a  
18 revocation, but it could just be that he needs six  
19 months focused again.  
20 SENATOR OROPEZA: So you would say this is not  
21 fair data to measure success or failure?  
22 MS. MELANSON: No, that's not what I'm saying.  
23 I'm saying some of that --  
24 SENATOR OROPEZA: All right. My question  
25 really is about how do you reconcile the statements that

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1 have been made at this table by all three of you about  
2 the success of the system and that there's adequate  
3 support programs. We can always do more, as you  
4 mentioned, but everybody seems at least minimally  
5 satisfied, yet we have that level. I really  
6 specifically would like to hear about that.

7 MS. MELANSON: Okay. All right. The numbers  
8 are high, and the numbers you're looking at were prior  
9 to the new processes that have just been put in place.  
10 And so that's what I'm talking about, hopeful for the  
11 future. I think in the next year, you're going to see a  
12 change in those numbers. You may not, and then we're  
13 going to have to say: Okay. Why aren't we seeing a  
14 change in those numbers? It is high right now, and  
15 there is no one more disheartened by those numbers than  
16 the board, because we do not want to see these kids come  
17 back.

18 SENATOR OROPEZA: Right.

19 MS. MELANSON: But we do have hardcore gang  
20 members who are going to keep coming back until the  
21 courts just put them in prison.

22 SENATOR OROPEZA: I understand that's the  
23 reality. I understand that's the reality.

24 All right, sir.

25 MR. ABDULMAJEED: My take is -- Basically, I

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1 stand with the comments that I've made. I appreciate  
2 your examining them in the way that you have, but my  
3 hope for the future in terms of DJJ is that the *L.H.* and  
4 the *Farrell* legislation will bring us into greater  
5 instances of reduction of recidivism as well as  
6 increased rehabilitation. That's my hope. And I think  
7 the way it's constructed and the department's response  
8 to it will provide that.

9 SENATOR OROPEZA: In this new plan, in this new  
10 approach?

11 MR. ABDULMAJEED: Yes, yes, yes.

12 MR. CAMERON: Success is -- it's really hard to  
13 measure. When I parole someone, I do parole them with  
14 the idea that -- or with the hope they're going to go  
15 out there and take some of the coaching that they have  
16 received or the treatment that they received and go out  
17 and make it in the community. But a lot of times it's  
18 the environment in which they're paroled back to.  
19 There's no guarantee. If they go back home and there's  
20 drugs, you know, in their -- within their reach, and  
21 they are dealing with the reality of the fact that  
22 they've got a criminal record, it's hard to get someone  
23 to take a chance on them to get hired. I mean, they  
24 start running into the problems of life. The coping  
25 mechanisms break down.

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1 SENATOR OROPEZA: That I would characterize is  
2 a failure of the system, not a failure of the child, in  
3 my humble opinion. And that is where I am asking you  
4 all to take some responsibility for not only making, you  
5 know, the yes, thumbs-up-thumbs-down decision, but being  
6 advocates for these kids when you see a pattern like  
7 that and you don't -- and you don't see something in the  
8 system working to fix it. That's sort of my message.

9 MS. MELANSON: May I -- Can I say one more  
10 thing?

11 CHAIRMAN STEINBERG: One last thing, and then  
12 we have to move on. Go ahead.

13 MS. MELANSON: I just wanted to add that some  
14 of the changes -- Let me just throw this out --

15 CHAIRMAN STEINBERG: Quickly, please.

16 MS. MELANSON: -- so you know kind of what we  
17 are talking about.

18 There's a dog-grooming program at Stark that I  
19 would never have expected the results that we're seeing.  
20 The guys that are taking these dogs 24-7 there --  
21 They're dogs that were abused. The shelter sent them  
22 over. They're retraining them, and then they adopt them  
23 out to a family after they retrain them. And I have  
24 seen hardcore gang members come in the hearing room and  
25 weep over their former commitment offense, because they

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1 reach that heart. And those are the changes that are  
2 fairly new, and the numbers don't reflect that yet.

3 CHAIRMAN STEINBERG: Okay. Let's hear from  
4 witnesses in support, please.

5 MR. EVANS: Bobby Evans --

6 CHAIRMAN STEINBERG: Come right on up here,  
7 Mr. Evans.

8 MR. EVANS: My name is Bobby Evans, and I'm  
9 here in support of Robert Cameron. I have known Robert  
10 for quite some time. He is also a board member for my  
11 agency. I'm the executive director for Families United,  
12 foster family agency and adoption agency, and he served  
13 our agency and our families and our kids very well as a  
14 board member.

15 I've had the opportunity to observe Robert as a  
16 coach for the youth, I've had an opportunity to actually  
17 coach with him, and I think that this position that he  
18 is being considered for -- I think he will do a very  
19 good job.

20 CHAIRMAN STEINBERG: Thank you very much,  
21 Mr. Evans. Appreciate it.

22 Any other witnesses? Any witnesses in  
23 opposition? One more witness in support. Okay. Are  
24 there any witnesses in opposition? This will be the  
25 last witness.

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1 Go ahead, sir.  
2 MR. FARDAN: Yes. My name is Daaiyallah  
3 Fardan. I'm currently the Islamic chaplain at  
4 California Prison in Sacramento, since February. Prior  
5 to coming there, I was 26 years a chaplain at the  
6 Ventura school in juvenile justice.  
7 I've had the great pleasure of knowing  
8 Mr. Abdulmajeed both professionally and personally over  
9 the last 40 years. I find him to be of firm conviction  
10 and very sound judgment. He is tactful, diplomatic, and  
11 on time. The State of California would be hard pressed  
12 to find a more qualified candidate for the position and  
13 commitment of the juvenile justice parole board. I  
14 strongly support his confirmation. Thank you.  
15 CHAIRMAN STEINBERG: Thank you, sir.  
16 All right. You've got another witness. Go  
17 ahead.  
18 If there's anybody else, please line up,  
19 because I want to --  
20 SENATOR OROPEZA: Anybody else out there?  
21 CHAIRMAN STEINBERG: Go ahead, sir.  
22 MR. RICARD: I'm Isaac Ricard, and very  
23 supportive of Rob Cameron. I worked with Cameron many  
24 years in Department of Corrections. He's a good man.  
25 He's done very good work. He's got character. He's

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1 very strong with youth. He spends a lot of time in with  
2 these kids, good kids and bad kids. So I just want to  
3 make sure that you guys are looking at a good man, and  
4 he'll do a very good job for you.  
5 CHAIRMAN STEINBERG: Thank you, sir. Thank you  
6 for taking the time to testify.  
7 Okay. There's no question in my mind that all  
8 three of you are professional and qualified, and that  
9 you take these very important cases very seriously, and  
10 that you have sound judgment, and that you ought to be  
11 confirmed. But I must tell you I'm a little bit  
12 unsettled. I'm a little bit unsettled based upon  
13 Senator Oropeza's questioning here, not the questions  
14 themselves, but the response, because -- I want to  
15 explain why.  
16 You know, you have not only important  
17 responsibilities, but you also have a pretty impressive  
18 title. You really do. And we desperately and this  
19 system desperately needs advocates.  
20 SENATOR OROPEZA: Yes.  
21 CHAIRMAN STEINBERG: And I'm a little -- I'm  
22 not sure if any of you, respectfully, really grasp sort  
23 of the import of Senator Oropeza's questions about the  
24 inadequacies of this system. And you're not responsible  
25 for the inadequacies, but you are in a much better

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1 position than most anyone to be able to be loud  
2 advocates for making this system better, and I didn't  
3 really hear that. I mean, I hear it in the way that you  
4 deal with the cases and that you care about the kids.  
5 That's not the issue.  
6 But once you are confirmed to these positions,  
7 you are independent. Nobody can -- You can't get  
8 pressure from the governor's office or from the  
9 legislature to say, "You know what? Stop speaking up.  
10 You're making our lives a little miserable here, because  
11 you're pointing out the inadequacies of the system or  
12 the difficulty of referring kids to programs or  
13 services, or mental-health services." And we do it  
14 here, and we have titles; but, frankly, the public ain't  
15 that enamored with us these days.  
16 And you have that ability and opportunity, and  
17 if you're going to be confirmed for lengthy terms here,  
18 we expect it on behalf of the kids, because I would  
19 submit to you that as fine of a job you are doing  
20 hearing these cases, you're not doing a good enough job  
21 if you're not out there rattling some cages around  
22 having more ability to help the kids you're responsible  
23 for succeed.  
24 So when I ask the question, "Have you ever  
25 written an op-ed piece for your local paper?" I mean,

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1 that's one example. That's one way to do it. But  
2 imagine the power, with your experience and your titles,  
3 with you basically calling out this system, unless you  
4 really do believe it's adequate and the change really is  
5 right around the corner. I don't.  
6 We had Matt Cate here for three sessions, and  
7 he's great, and we confirmed him, and he's a fine  
8 leader. But this system needs advocates. And if you  
9 didn't internalize that based upon this exchange for the  
10 last half hour or 45 minutes, I'm inclined maybe even to  
11 put this over. But I just need to hear from you here,  
12 because, again, it doesn't have anything to do with your  
13 qualifications, but I don't think things are fine.  
14 SENATOR OROPEZA: Your vision is what we're  
15 looking at.  
16 If I can just add --  
17 CHAIRMAN STEINBERG: Yes.  
18 SENATOR OROPEZA: Your vision. We're looking  
19 for what your vision or what the position should be and  
20 can be and that you want it to be.  
21 CHAIRMAN STEINBERG: We're not asking you to  
22 solve the world's problems here, but to see your role as  
23 being outspoken about what you have the most credibility  
24 to speak about, because you see it every day, and you  
25 deal with the successes, the failures, and you know the

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1 reasons for the failures and what we could be doing  
2 better to address those failures.

3 So I guess in conclusion, I'd like to hear your  
4 response to my, hopefully, constructive critique of this  
5 conversation.

6 MR. ABDULMAJEED: I'll take a first shot at it,  
7 Senator Steinberg.

8 I agree with you that the cry is out for  
9 justice for our young people, and that they are hard  
10 pressed to make it in the schools, in the society, and  
11 that to some extent we failed them, trailed them, nailed  
12 them, and jailed them. It sounds contrite, but in many  
13 senses that's what happened. Yet being aware of that  
14 and being in the position that I'm in -- As you  
15 mentioned, there are political consequences to consider  
16 if you get out ahead of the people that appoint you, as  
17 well as appearing to be a whistleblower or something of  
18 that nature. I would be less than honest if I told you  
19 those were not concerns in my head. I won't speak for  
20 the other commissioners, but those concerns do exist.

21 You hit -- not the nail on the head, but that  
22 is something that is there when you're a political  
23 appointee.

24 CHAIRMAN STEINBERG: Even after you're  
25 confirmed? You're independent. I mean, can the

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1 Let me clarify, then. Does that political  
2 pressure, if we confirm you and you are -- for you to  
3 serve a full term, do you still feel that shining light  
4 from your appointing power upon you?

5 MR. CAMERON: I'm going to be honest with you.  
6 I haven't thought about it. One of the things that I  
7 have done since I've been there is I've always made  
8 mention of the condition of the facilities. "Is there  
9 anything we can do to get some more paint over here?"  
10 or is there -- you know, "What's the rec program like?"

11 I've gone out and actually walked the  
12 facilities and just looked around to see what wards were  
13 doing on their free time, so to speak. If you're  
14 looking for an advocate, you got one. I am a cage  
15 rattler, and I continue to do so.

16 MS. MELANSON: I'd like to add that it's not --  
17 I visit the units frequently, and when I came into this  
18 position, I got to be honest, the boardrooms were not  
19 looking like the boardrooms they do today. The  
20 superintendents are used to seeing me come in their  
21 door, and I have access to the superintendents, and I do  
22 tell them what I see and what I think.

23 I have had -- I have had my battles, if you  
24 will, with individuals that I don't think are performing  
25 adequately, and I report that to Sacramento. It's not

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1 governor remove --

2 MS. SABELHAUS: From the new term.

3 SENATOR OROPEZA: Yeah. Mr. Cameron is  
4 vulnerable in that way, because he doesn't have a  
5 full -- the other two --

6 CHAIRMAN STEINBERG: Explain. Nettie, can you  
7 take the mic for a sec?

8 MS. SABELHAUS: Mr. Cameron is in his first  
9 term, and prior to his confirmation in that first year,  
10 he is at the pleasure -- he serves at the pleasure of  
11 the governor.

12 CHAIRMAN STEINBERG: Prior to his confirmation.

13 MS. SABELHAUS: Until he is confirmed and,  
14 presumably, locked into his term, he is at the pleasure  
15 of the governor.

16 CHAIRMAN STEINBERG: You just answered my  
17 question.

18 SENATOR OROPEZA: Including this discussion  
19 today.

20 CHAIRMAN STEINBERG: Including the discussion  
21 today.

22 SENATOR OROPEZA: Including everything until we  
23 cast a vote.

24 CHAIRMAN STEINBERG: Until we cast a vote on  
25 the Senate -- okay.

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1 the kind of thing that I'm going to just come out and  
2 talk about. It's something that I'm not afraid to do,  
3 but I kind of don't know -- You know, given your  
4 question, it's relevant to talk about that. And I am an  
5 advocate, and I do see things, and I do report those  
6 things. Further, when it's appropriate, we take it to  
7 our board meeting and bring it up there.

8 Having said that, I think I can do better by  
9 making regular contact with the secretary and his  
10 deputy, and I'd be happy to do that.

11 MR. ABDULMAJEED: A final statement from me.  
12 As an example, when I was assistant director of the  
13 Department of Alcohol and Drug Programs, because I had  
14 successfully overcome substance abuse and then was  
15 appointed deputy director of the Department of Alcohol  
16 and Drug Programs, I was two things: I was, one,  
17 someone who had personal experience; and I was also an  
18 advocate in the face of recovery for the addicted  
19 population of the state of California. In that  
20 capacity, I was not appointed -- I was appointed, but I  
21 didn't have to have confirmation. I was very visible  
22 and very vocal on many, many issues, particularly our  
23 young people, on television, in the paper writing  
24 op-eds. I have the capacity to do that. I have the  
25 desire to do that.

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1 I want to talk about -- I want to write an  
2 op-ed on what's going on with Sacramento County when  
3 they say that the budget should be balanced on the  
4 Thornton Center and the other center where the young  
5 people are going to go. Are they going to wind up in  
6 DJJ? I hope not. I don't know. But I would like to  
7 speak out and, you know, circle the wagons and do  
8 something about it and not just say, "Well, it's a  
9 budget consideration."

10 But, again, sir, the emphasis for me is on the  
11 delicate balance between maintaining my autonomy as a  
12 commissioner and my ability to adjudicate cases without  
13 being too public and having those things confused in the  
14 minds of the population of young wards.

15 MS. MELANSON: One thing further I would like  
16 to add: My background is programs, and so I do  
17 recommend programs that I feel are lacking, including  
18 utilizing community-based agencies who would be able to  
19 do just great work with our population, and I just had  
20 that conversation the other day with the director.

21 CHAIRMAN STEINBERG: Okay. These nominations,  
22 if we don't confirm on the floor, would expire July the  
23 1st of this year.

24 I'd take a motion to move them to the Senate  
25 floor.

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1 SENATOR OROPEZA: I'll move their  
2 confirmations.

3 CHAIRMAN STEINBERG: And we'll take them up at  
4 our discretion.

5 Thank you all very much. Moved to the floor.  
6 Okay.

7 Please call the roll.

8 MS. BROWN: Senator Cedillo.

9 Dutton.

10 Oropeza.

11 SENATOR OROPEZA: Aye.

12 MS. BROWN: Oropeza aye.

13 Aanestad.

14 SENATOR AANESTAD: Aye.

15 MS. BROWN: Aanestad aye.

16 Steinberg.

17 CHAIRMAN STEINBERG: Aye.

18 MS. BROWN: Steinberg aye.

19 CHAIRMAN STEINBERG: Three to nothing. Thank  
20 you very much.

21 (Applause.)

22 CHAIRMAN STEINBERG: We'll leave the roll open  
23 for Senator Dutton. He can vote as well.

24 Thank you very much. Appreciate it. And that  
25 advocacy issue, I should just say, extends to

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1 communicating with us as well to let us know what you  
2 think, certain policy recommendations.

3 You know, judges -- just to make an analogy for  
4 a minute -- Judges have not only the right, but,  
5 arguably, the obligation under the Code of Ethics to  
6 advocate for the better administration of justice. So  
7 even though judges aren't politicians and can't get  
8 involved in campaigns and that sort of thing, they can  
9 be outspoken about the administration of justice, and  
10 that includes advocating before the legislature. So  
11 know that we would love to see you here.

12 Thank you very much.

13 MR. ABDULMAJEED: Thank you.

14 (Recess taken.)

15 CHAIRMAN STEINBERG: All right. The Committee  
16 is back in order.

17 I would like to open the roll, please, for file  
18 item 2 -- 2A, B, and C. Excuse me.

19 Please call the absent member.

20 MS. BROWN: Senator Cedillo.

21 Dutton.

22 SENATOR DUTTON: Aye.

23 MS. BROWN: Dutton aye.

24 CHAIRMAN STEINBERG: All right. Thank you.

25 Four-zero. Those nominations are out.

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1 Let's go back to one, reference of bills. Any  
2 questions, concerns? Okay. Moved by --

3 Are you okay, Senator Oropeza?

4 SENATOR OROPEZA: I'm sorry?

5 CHAIRMAN STEINBERG: On the referral of bills,  
6 item number one.

7 SENATOR OROPEZA: Yeah. No objection.

8 CHAIRMAN STEINBERG: Okay. Moved by Senator  
9 Oropeza.

10 Please call the roll.

11 MS. BROWN: Senator Cedillo.

12 Dutton.

13 SENATOR DUTTON: Aye.

14 MS. BROWN: Dutton aye.

15 Oropeza.

16 SENATOR OROPEZA: Aye.

17 MS. BROWN: Oropeza aye.

18 Aanestad.

19 SENATOR AANESTAD: Aye.

20 MS. BROWN: Aanestad aye.

21 Steinberg.

22 CHAIRMAN STEINBERG: Aye.

23 MS. BROWN: Steinberg aye.

24 CHAIRMAN STEINBERG: Four-zero. That's out as  
25 well.

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1 Okay. Let us move to Stephen W. Kessler as  
2 chief deputy, Department of Public Health.

3 Welcome to you, sir.

4 MR. KESSLER: Thank you.

5 CHAIRMAN STEINBERG: Again, the fine Rules  
6 Committee tradition inviting you to introduce anybody,  
7 special guests, family, et cetera, here today.

8 MR. KESSLER: Thank you, Mr. Chairman. Here  
9 today is my mother, Janet Kessler.

10 CHAIRMAN STEINBERG: Welcome.

11 MR. KESSLER: Sitting next to her is my  
12 significant other, partner, Erica Spurbeck (phonetic).

13 CHAIRMAN STEINBERG: Welcome.

14 MR. KESSLER: Sitting over there next to her is  
15 Scott Kearny. He works for the Health and Human  
16 Services agency. He's not here in a spy capacity. He's  
17 also a friend of mine.

18 I want to introduce Monica Wagner, who is our  
19 deputy for legislative and government affairs.  
20 Notwithstanding our efforts in H1N1, she has been  
21 positively unrelenting in trying to get me prepared for  
22 this hearing today. So thank you.

23 CHAIRMAN STEINBERG: We know Ms. Wagner, and  
24 she's great, and that's great. Okay. Very good.

25 Why don't we begin with a brief opening in

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1 terms of how you view this department, and specifically,  
2 I want to put out the big-picture question at the  
3 beginning here so you can be responsive. And that is:  
4 As we deal with this very challenging budget  
5 environment, and we make inevitable deep cuts, what is  
6 the impact on public health? Plain and simple. And  
7 what is at risk here in terms of California's response  
8 to the various public-health issues that we either know  
9 about or don't know about? That's what -- That's what I  
10 would like this hearing, frankly, to be about.

11 MR. KESSLER: Would you like me to jump into  
12 that answer?

13 CHAIRMAN STEINBERG: Go right into it. You  
14 don't have to read a formal statement. Go, go, go.

15 MR. KESSLER: Thank you, Senator Steinberg and  
16 Members.

17 We have seen some budget cuts within public  
18 health, and what our responsibility is, is to do the  
19 best job within the public-health programs we administer  
20 within the resources that are provided.

21 These are difficult times. These are the best  
22 of bad choices, and so far we have experienced fairly  
23 limited general fund reductions in our public-health  
24 programs. That may change in the upcoming budget, given  
25 the revenue shortfall that the state is experiencing,

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1 but so far I think we have adequately protected the  
2 public health of the citizens of California within the  
3 resources that were provided.

4 CHAIRMAN STEINBERG: Let me just, again, if you  
5 don't mind, cut right to it here. You have a  
6 \$3.3 billion budget. Three hundred fifty million  
7 dollars is general fund, and 1.6 billion is federal  
8 funds. Where is the remainder? And how significant is  
9 the federal funding or other funding dependent upon any  
10 form of maintenance of effort to keep that level of  
11 general fund spending at a certain level?

12 MR. KESSLER: You're right. Our budget is  
13 about 3.3, 3.4 billion dollars, of which slightly less  
14 than 10 percent is state general fund, about \$340  
15 million. A big chunk of that is federal money,  
16 primarily from USDA, that supports our Women, Infants,  
17 and Children supplemental food program.

18 The balance of the funds are special funds. We  
19 administer over 55 individual funds in addition to the  
20 federal trust fund and the general fund within the  
21 department. So it's primarily our fee-supported,  
22 special-fund-program activities, like genetic disease  
23 testing or radiological health, that supports our  
24 programs.

25 CHAIRMAN STEINBERG: And what about maintenance

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1 of effort?

2 MR. KESSLER: Maintenance of effort, the  
3 primary -- The larger program with general fund with  
4 maintenance of effort is our Office of AIDS ADAP program  
5 that provides pharmacy services to people with HIV.  
6 There is a general fund maintenance of effort  
7 requirement for our ADAP program.

8 CHAIRMAN STEINBERG: What is that?

9 MR. KESSLER: Currently, we're spending  
10 approximately \$97 million state general fund for that  
11 particular program. We also have -- I don't know off  
12 the top of my head -- millions of dollars of pharmacy  
13 rebate money that the State Department of Public Health  
14 collects and reinvests back into our ADAP program. So  
15 if there were general fund reductions in ADAP, we would  
16 have a maintenance of effort requirement. Potentially,  
17 we could lose federal funds, or we would look to other  
18 departments to backfill our maintenance of effort  
19 requirements. For example, we would work with the  
20 Department of Corrections and Rehabilitation to see if  
21 any of their general fund money could be used for that  
22 purpose.

23 But at this point, this conversation is  
24 hypothetical. We haven't seen any reduction to our  
25 ADAP general fund money, and we have been able to

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1 sustain our existing program level. Of course, that  
2 could change.  
3 CHAIRMAN STEINBERG: It probably will. Okay.  
4 Go ahead. I didn't want to cut you off  
5 completely, but I really kind of wanted to get to the  
6 heart of it.  
7 You're the deputy director, and you're in  
8 charge, essentially, of, as I understand it,  
9 administration --  
10 MR. KESSLER: Correct.  
11 CHAIRMAN STEINBERG: -- and finance. And so we  
12 want to know, really, what the tipping point here is as  
13 we deal with this difficult budget situation when it  
14 comes to public health. What could be more important  
15 than preventing infectious diseases or the spread of  
16 diseases than, you know, what you're doing? And as we  
17 take a scalpel here across the board, I want to know  
18 your view of what the impact will be.  
19 MR. KESSLER: I think it depends on where those  
20 general fund reductions may occur. There are core  
21 public-health functions that we are going to want to  
22 maintain, to preserve. We go through the department's  
23 general fund, even though it's a relatively small  
24 percentage, and prioritize from a public health  
25 perspective the most important to the least important.

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1 I learned long ago from Beverly Myers, who was  
2 the director of then Health Services, public health is  
3 politics. For every dollar in public health, there is a  
4 constituent. We provide vital services to  
5 34 million Californians, so there will be consequences  
6 if we're faced with reductions in our program.

7 We would look at and analyze the least amount  
8 of reduction and disruption to direct services for our  
9 epidemiological programs for infectious diseases, for  
10 licensing nursing homes and hospitals which is special  
11 fund, cease that it be supported.

12 So we would go through a rigorous review of our  
13 general fund and attempt to set priorities within public  
14 health.

15 CHAIRMAN STEINBERG: Let's take one example.  
16 Senator Negrete McLeod is in the front row -- welcome to  
17 you -- and our Senator chairs a select committee on  
18 groundwater contamination. And Senator Negrete McLeod  
19 is the Senate lead on federal economic stimulus funds  
20 for clean drinking water. She's working, actually, with  
21 the administration on Senate Bill 27XX to help make the  
22 funds available.

23 As I understand it, the Senator can speak for  
24 herself when it comes time for the testimony, but that  
25 she's working on a oversight hearing to make sure that

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1 poor and disadvantaged communities get their share of  
2 this money. And part of the concern that has been  
3 expressed to this office is that you have a terrific  
4 staff in that area, but that there are retirements  
5 taking place. The office seems to be in transition, and  
6 with this budget shortfall, it makes -- she raises the  
7 question -- I'm raising it now on her behalf -- will the  
8 office be sufficiently equipped to be able to draw down  
9 these federal dollars and spend them appropriately to  
10 stand up for vulnerable and disadvantaged communities?

11 MR. KESSLER: I hope the answer to that is yes.  
12 You know, in the questions that you asked me, and my  
13 response is: What's the department's priorities and  
14 what are my priorities?

15 One of our number one priorities has to be to  
16 recruit, to retain, to train and keep a public health  
17 workforce. We can have the best programs available, but  
18 unless we have our most important asset, our employees,  
19 the human resources necessary to implement these public  
20 health programs, we have nothing. So one of our top  
21 goals is workplace and workforce.

22 Most of the drinking water program is supported  
23 by bond funds, so hopefully it's not a general fund  
24 issue; but it's going to be a workforce issue that we're  
25 looking at very, very closely. So I hope that we do

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1 have a sufficient staff. The turnover statistics on  
2 rank-and-file and managers throughout state government  
3 is simply staggering.

4 I attended a public health workforce seminar at  
5 the end of March, and it had every school of public  
6 health in California there and some fairly lofty public  
7 health officials. And one individual, Dr. Gebbie, told  
8 the public health audience that -- the scientists, the  
9 researchers, the physicians -- "Your job, number one, is  
10 public health workforce." Her exact words is, "Put your  
11 disease de jour," of the week or month -- this was  
12 pre-H1N1 -- "in a corner, and your responsibility is to  
13 focus on workforce."

14 And that's what we have to do successfully in  
15 public health in order to have the workforce to roll out  
16 and to maintain these vital programs to all of  
17 Californians.

18 CHAIRMAN STEINBERG: Okay. Questions from  
19 Members. Questions from Members. Okay.

20 It wouldn't be a full hearing if we did not ask  
21 you about the so-called H1N1 virus, as you referenced,  
22 otherwise known as the swine flu.

23 What can you tell us and the people of  
24 California about what we're doing? I know there was a  
25 full hearing on this subject a couple weeks ago, but

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1 let's get an update here.

2 MR. KESSLER: I would be happy to provide that.  
3 As you pointed out, I'm over operations, and not program  
4 and policy, so I'll give you an update from my  
5 perspective.

6 I think overall, federal and state public  
7 health had an outstanding response to H1N1. When we  
8 look at communications that we did with local health  
9 departments, with medical providers, with nursing home  
10 facilities, with acute care hospitals, we were in  
11 constant communication with them. We were constantly  
12 putting out public-health guidelines to address issues  
13 surrounding H1N1. We set up a resource hotline to  
14 accommodate calls from the public in English and Spanish  
15 and another half dozen languages available, depending on  
16 the caller. So I think overall, Public Health had an  
17 appropriate and a very solid response.

18 Now, what we're going to do is debrief, hot  
19 wash, as they call it, lessons learned. What did we do  
20 really well, what did we do well, and, equally  
21 important, where can we improve on our response.

22 I think internally where we need significant  
23 improvements is -- We literally had public-health  
24 professionals working weeks around-the-clock, and you  
25 simply can't sustain that. So we have put in a team

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1 concept, teams two and three, to provide adequate relief  
2 to the first set of responders who were working in our  
3 joint emergency operations center and also at our  
4 Richmond campus where we had a Richmond campus  
5 coordinating council.

6 CHAIRMAN STEINBERG: Do you have any response  
7 to the criticism or the critique of the Health Officers  
8 Association of California which reported recently that  
9 in their view, the H1N1 virus could have been detected  
10 two weeks earlier had the San Diego public health labs  
11 been fully staffed?

12 MR. KESSLER: I think that that's more of an  
13 epidemiological question that I would pose back to our  
14 experts in the department. You know, I can't confirm or  
15 deny that particular statement.

16 You know, the local governments are also facing  
17 significant budget shortfalls, and at times they too  
18 have to make tough choices about reductions in their  
19 city government and their county government.

20 So there are consequences with reductions in  
21 budgets, but I can't really specifically address if we  
22 could have detected H1N1 two weeks earlier in San Diego.

23 CHAIRMAN STEINBERG: All right. My last  
24 question, and I'll either turn it over or call for the  
25 witnesses. And that is: In your view, is State hiring

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1 too complicated? You talk about developing, you know, a  
2 public-health workforce, recruitment, and retention.  
3 You've artfully, I think, answered the question around  
4 what the impact will be to future budget cuts. We don't  
5 know yet what the cuts will be and what their impact  
6 will be; but, in general, as you think to recruit and  
7 retain the people that you need to respond aggressively  
8 to situations in California, how hard is it, in your  
9 view, to hire the right people?

10 MR. KESSLER: I'd say on a one-to-ten, with ten  
11 being the hardest, it's probably somewhere about a six  
12 or a seven. It's difficult in state government, and I  
13 kind of smile when you ask the question, because when I  
14 worked for Kim Boucher, when she was director of health  
15 services and Governor Wilson was reelected, they were  
16 looking for the initiatives, and I shot up my hand and  
17 said, "I'll lead civil service reform efforts in the  
18 state of California." Of course that was many, many  
19 years ago. That's the bad news.

20 The good news is I think government and the  
21 administration is being responsive. We've got the HR  
22 modernization program in the Department of Personnel  
23 Administration, and that is going to assist us. We've  
24 got the legislature and the Bureau of State Audits  
25 looking at what are departments doing on workplace and

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1 workforce, and we're working on a specific succession  
2 plan for the Department of Public Health.

3 We have actually created an office of  
4 leadership and workforce development. We have  
5 redirected eight positions to that office with very  
6 specific activities and action plans to deal with the  
7 highest-priority classifications in the department.

8 We employ 3400 employees. We have hundreds of  
9 different classifications that we use in public health.  
10 That needs to be streamlined, and I think state  
11 government is responding to that.

12 CHAIRMAN STEINBERG: I said it was the last  
13 question, but one more. I'm sorry. I don't want to  
14 dominate, but I just --

15 SENATOR OROPEZA: No, it's good.

16 CHAIRMAN STEINBERG: How should we measure the  
17 department's performance in meeting the public-health  
18 objectives over time? What should we be looking at as  
19 we assess your needs, your budget, your performance?

20 MR. KESSLER: I think you can measure success  
21 for public health broadly by looking at our vision/  
22 mission statement, but more importantly the five goals  
23 that are set out in our strategic plan. And, broadly,  
24 that is healthy people; it's better using our data  
25 warehouse to analyze and make decisions; it's emergency

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1 response and preparedness; it's workplace and workforce;  
2 and, lastly, it's improving business functions in our  
3 operations of a very, very large department.

4 So we have very specific goals and objectives  
5 in our strategic plan. We have very detailed action  
6 plans to meet those objectives. So I think to measure  
7 success would be as defined in our strategic plan. And  
8 from my perspective, from operations, are we making  
9 public health more efficient and more effective in  
10 delivering operational services, whether it's human  
11 resources, budgets, responsiveness to our customers,  
12 including the legislature, within the administration?  
13 Are we paying our bills on time to the extent that we  
14 don't have cash flow problems? That's another  
15 measurement of success.

16 The other one is vacancy. You measure an  
17 organization's success by our vacancy rate, and in  
18 Public Health, we're down to single digits. Our view is  
19 that an authorized position in a budget approved by the  
20 legislature that's idle and vacant is not doing a public  
21 health good or purpose. So we have approximately about  
22 a 9.5 percent vacancy rate in public health overall,  
23 probably unheard of in the last decade, and within  
24 operations an 8.8 percent vacancy rate. So filling  
25 positions is absolutely critical.

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1 CHAIRMAN STEINBERG: Okay. Thank you.  
2 Witnesses in support here.  
3 Who is this gentleman coming up?

4 MR. PONER: Senator Steinberg, Members of the  
5 Committee, Bruce Poner of the Health Officers  
6 Association of California representing the 50 -- the  
7 physician health officers in California's 58 counties.  
8 We have an excellent relationship with Mr. Kessler.  
9 He's very open, forthright. He's very supportive in  
10 helping us understand the budget process. It's clear  
11 over time that he has improved administrative processes  
12 at the department that enable us to do our job more  
13 effectively at the local level. And I think his  
14 reference to Bev Myers, going back some 30 years, shows  
15 the incredible experience he has and the kind of  
16 relationship he's had with us over time. So we're very  
17 much in favor of his confirmation.

18 CHAIRMAN STEINBERG: Very good. Thank you very  
19 much. Appreciate it.

20 Next. Welcome.

21 MS. ARMSTRONG: Thank you. Good afternoon.  
22 Betsy Armstrong on behalf of the County Health  
23 Executives Association. Our members are the local  
24 health department directors. They've been very  
25 appreciative of Mr. Kessler's responsiveness to their

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1 queries to the department, and we strongly urge his  
2 confirmation. Thank you.

3 CHAIRMAN STEINBERG: Thank you. I just want to  
4 make sure one thing. Just to get your commitment on the  
5 record here that you will work with Senator Negrete  
6 McLeod on this issue of ensuring that we have an  
7 aggressive, effective implementation of the clean water  
8 issue, and that you will take full advantage of those  
9 federal funds.

10 MR. KESSLER: Absolutely. If there's further  
11 outreach we need to do with the senator, working closely  
12 with the community, input to that, we would be very  
13 happy to work directly with the senator to meet any  
14 concerns that she has about process or funding.

15 CHAIRMAN STEINBERG: Very good.

16 Are there witnesses in opposition here to  
17 Mr. Kessler?

18 There is not. Be happy to take a motion.

19 SENATOR DUTTON: So moved.

20 CHAIRMAN STEINBERG: Moved by Senator Dutton.

21 Thank you for your public service --

22 MR. KESSLER: Thank you very much.

23 CHAIRMAN STEINBERG: -- your continued public  
24 service, and I thought your answers were very  
25 responsive. And, again, we are counting on you, since

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1 this is such an important policy area, to be very clear  
2 with us about the consequences of budget decisions that  
3 we're going to be called upon to make here over the next  
4 number of months. All right?

5 MR. KESSLER: You have that commitment,  
6 Senator.

7 CHAIRMAN STEINBERG: Thank you.  
8 Please call the roll.

9 MS. BROWN: Senator Cedillo.  
10 Dutton.

11 SENATOR DUTTON: Aye.

12 MS. BROWN: Dutton aye.  
13 Oropeza.

14 SENATOR OROPEZA: Aye.

15 MS. BROWN: Oropeza aye.  
16 Aanestad.

17 SENATOR AANESTAD: Aye.

18 MS. BROWN: Aanestad aye.  
19 Steinberg.

20 CHAIRMAN STEINBERG: Aye.

21 MS. BROWN: Steinberg aye.

22 CHAIRMAN STEINBERG: Very good. This will move  
23 to the floor.

24 MR. KESSLER: Thank you, Members.

25 CHAIRMAN STEINBERG: And we will talk soon.

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1 Thank you very much. Very good. All right.  
2 (Thereupon, the Senate Rules Committee hearing  
3 adjourned at 3:20 p.m.)  
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APPENDIX

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2 I, INA C. LeBLANC, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify  
4 that I am a disinterested person herein; that the  
5 foregoing transcript of the Senate Rules Committee  
6 hearing was reported verbatim in shorthand by me,  
7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.  
10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in  
12 any way interested in the outcome of said hearing.  
13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 18th day of May, 2009.  
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INA C. LeBLANC  
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CSR No. 6713

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Askia Abdulmajeed  
Responses

Senate Confirmation  
Askia M. Abdulmajeed, Commissioner  
Juvenile Parole Board  
Responses to Senate Rules Committee Questions  
May 5, 2009

Senate Rules Committee  
MAY 05 2009

**Statement of Goals**

**Appointments**

*Prior to the July 2005 Department of Corrections reorganization, juvenile parole issues were heard by the Youthful Offender Parole Board. However, in 2005 the Board of Parole Hearings was established as part of the broad reorganization of the former Youth and Adult Corrections Agency (now known as the California Department of Corrections and Rehabilitation). Initially, the five juvenile commissioners were part of a board with the 12 adult commissioners. However, on January 1, 2007, the five members responsible for juvenile matters were transferred to the jurisdiction of the chief deputy secretary of the Division of Juvenile Justice (DJJ), pursuant to SB 737 (Romero), Chapter 10, Statutes of 2005. As a result, the Juvenile Parole Board is now part of DJJ.*

*The duties of the five members of the Juvenile Parole Board include establishing the terms and conditions of parole for soon-to-be-paroled youthful offenders, determining whether parolees should be returned to an institution for parole violations, and conducting annual reviews to assess progress of an offender.*

*The juvenile offender population under state jurisdiction has decreased markedly over the past decade, from 10,000 to less than 1,700, as counties have been given more responsibility for handling these offenders. There are about 2,100 juvenile parolees. At the same time, partly because of lawsuits, the annual cost of housing juvenile offenders in state facilities has risen to more than an estimated \$250,000, according to the Little Hoover Commission. The overall budget for juvenile parole is about \$30 million a year.*

- 1. What are your goals and objectives as a commissioner? How have they changed since you were previously confirmed by the Senate Rules Committee? How will you measure your success as a board member?**

It remains my personal goal to conduct fair, impartial, and consistent hearings. and to make decisions based on careful consideration of all the information available to me in order to fulfill my responsibility to public safety and due-process for the youth.

- 2. You have served on this board since 2007. Are there parts of the hearing process you would change to make the process more effective? Are there changes you would make that you believe would result in more rehabilitation and less recidivism?**

It has been my honor to serve on the Board since my initial appointment in 2007. I think the biggest changes in DJJ as a whole since coming on the Board have been a result of the *Farrell* and *L.H.* class action law suits. The *Farrell* class action lawsuit will perhaps



have the biggest impact on increasing rehabilitation and reducing recidivism.

### **Training and Policies**

*The 2005 reorganization of the correctional system requires new commissioners to undergo a minimum of 40 hours of training within 60 days of appointment and annually thereafter. Senate staff has been told that commissioners participate in trainings provided by DJJ facility and parole staff, including motivational interviewing, a risk assessment and integrated behavior treatment model, and an overview of aggression-replacement training. Staff has also been told that commissioners are being trained on new tools for decision making.*

- 3. You previously indicated to the Rules Committee having extensive training to prepare you for your position. How has that training been updated during your tenure? Do you continue to meet with superintendents of DJJ facilities?**

My training as a DJJ Commissioner continues to remain congruently updated in the critically related areas of: conducting exit interviews for parole violators; Juvenile Revocation Scheduling and Tracking System (JSTS); as well as implementation of the policy in the *L.H. v. Schwarzenegger* settlement. Yes, I do continue to interact with Superintendents of DJJ facilities.

- 4. You previously told the Rules Committee that you had a policy to tour facilities and observe group activities as much as possible. Are you still able to tour facilities? Do you see a change in programs? If so, please explain.**

Yes, as recent as April 22, 2009, I was able to observe activities at O.H. Close and N.A. Chaderjian Youth Correctional Facility (NACYCF). At O.H. Close, I sat in with the youth during a Sex Offender Treatment Group. At NACYCF, I observed a couple of programs: 1) the Intensive Behavior Treatment Program, which serves the most severely disturbed group of violent and aggressive wards needing psychological, psychiatric, and secure services; and 2) the Sex Behavior Treatment Program, which provides treatment designed to intervene in the criminal behavior pattern and sexual assault cycle of youthful offenders between the ages of thirteen and twenty-five.

- 5. Do you receive legal or other guidance on the most effective strategies in dealing with juvenile wards, witnesses, and attorneys when conducting a hearing? Who provides that guidance, and is it available during a hearing?**

I do receive legal and other guidance in these areas. The guidance is provided by the Chief of Court Compliance and the Juvenile Parole Board (JPB) Staff Counsel during

monthly Board meetings, and as needed. I can also contact them telephonically during hearings.

**6. *Please describe how you use the board's new decision-making and assessment tools.***

The Youth Assessment Screening Instrument (YASI) has just now been appearing in ward's files. While helpful, I look forward to it being incorporated formally into a revised parole decision making procedure.

**7. *You previously told the Rules Committee that you "eagerly" awaited additional training on how to conduct probable cause hearings. Has that occurred? If so, was the training adequate?***

Absolutely! I feel that the intensive two day training on the policy for the *L.H. v Schwarzenegger* settlement, as well my continued observation and participation in Probable Cause Hearings is more than adequate to my knowledge base as JPB Commissioner.

**Parole Revocation Hearings**

*Under a federal court agreement, in a case known as Valdivia v. Schwarzenegger, adult parole violators have the right to counsel and other due process protections in parole revocation hearings. Juveniles sought similar rights in another federal case referred to by the juvenile plaintiff's initials—L.H. The lawsuit alleged that juveniles accused of parole violations were held for weeks or months without any hearings. As part of the settlement in the case reached last year, DJJ agreed to provide legal counsel for all parolees subject to parole violation allegations. One of the expert witnesses on behalf of offenders said in a 2008 deposition in the L.H. case that, in his view, parole proceedings, "particularly those that extend time in custody or deny or delay parole—deprive incarcerated ward/parolees of fundamental due process rights while failing to fulfill the statutory goal of the Division of Juvenile Justice (DJJ), which is to rehabilitate youth."*

**8. *In what ways are you informed about the availability of alternative sanctions, short of reinstitutionalizing an offender, when considering parole revocation? Are there additional programs that you think should be available?***

Parole agents provide information in parole revocation reports for consideration in Probable Cause Hearings and in person at Revocation Hearings.



- 9. You have previously indicated that you were consulted about the L.H. settlement regarding juvenile parole revocation. Are you continuing to be updated on the implementation of L.H.? How do you evaluate the implementation?**

To be specific, my latest training on the *L.H. v Schwarzenegger* implementation was as recent as January 5 and 6, 2009. I believe the implementation has been very successful based on regular update reports at Board meetings and through the training we receive.

- 10. You have previously indicated there is always a need for more transitional services, especially group homes and substance abuse programs. Has that situation improved? Please explain.**

There remains a need for the transitioning of youthful offenders back to their families and communities. When it is safe, mutually desired, and the needed resources are adequate, DJJ's preference is family reunification. The aforementioned concerns notwithstanding, leaves the next best option of placement in group home settings where various services such as substance abuse are available. More group home placements providing, or connected to services, would be beneficial.

#### **Parole Consideration Hearings**

*Hearings are conducted at youth facilities, adult prisons, and parole offices throughout the state. Commissioners sometimes conduct a number of hearings in a single day. "*

- 11. You have previously said that you were confident that your preparation for hearings was adequate. When do you prepare for hearings and review files? Are there ways in which this process could be improved?**

My preparation for hearings remains adequate. I continue to arrive early enough to thoroughly review files of wards scheduled for hearings, and taking as much time as needed between hearings to continue to prepare for each individual case.

#### **Time Issues**

*DJJ has a disciplinary system in which additional time can be added before a youth may be considered for parole. Youth can appeal these "time adds" to the board. A national team of experts who reviewed DJJ several years ago recommended that the system of "good time" be enhanced so that youths who participate in programs and stay out of trouble can earn back their disciplinary time and be considered for parole at an earlier date.*



- 12. Experts who reviewed DJJ practices stated that an average of one-third of all time spent in DJJ was a result of additional time being added to confinement time after a ward is incarcerated. From your experience, what are the factors causing increases in the lengths of stay for youthful offenders? What action, if any, would you recommend to address this issue? How has your review of time adds changed since you were first confirmed?**

This is a three-fold question of significant importance. My response is therefore in triplicate form also. Firstly, the negative attitudes, behaviors, and consequences of violent, disruptive and gang immersed youthful offenders continue to remain the largest percentage of Disciplinary Decision Making System (DDMS) time extensions. Secondly, because the opposite is true of other youthful offenders in the same facilities, whose positive attitudes, behaviors and consequences, earn Time Modifications, I continue to encourage wards to make wiser choices concerning their behavior. Basically, the Commissioners review the time adds through the ward's appeal process.

- 13. What is the board's policy on factoring in good time or positive behavior? Has the board discussed the best approach to this issue? How do you make this determination?**

The treatment teams make recommendations to the Board regarding modification or reduction for the ward's parole consideration date related to the ward's good behavior. The Board considers these on a case by case basis taking into account all factors involved in the case.

### **Farrell Lawsuit**

*In 2004 the Administration reached a landmark settlement in the Farrell lawsuit on the conditions of confinement in juvenile facilities. DJJ is supposed to implement a broad array of reforms, including creating smaller living units, improving education and mental health services, and bolstering safety.*

*In February 2008, however, lawyers representing juveniles urged a judge to name a receiver to run the system they said remained broken. And in October 2008 an Alameda County judge stated the state was "in gross violation" of court orders by taking too long to reform its juvenile prison system. But he delayed appointment of a receiver to allow the board time to speed up improvements. Meanwhile, the passage of SB 81 (Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, shifted responsibility to counties for all but the most violent juvenile offenders. In addition, the Little Hoover Commission recently recommended that the state eliminate its juvenile justice operations by 2011.*

- 14. You previously indicated you were kept abreast of Farrell developments at board meetings and that the board has a role “to play in ensuring that offenders receive agreed upon treatment.” What have you done to ensure that offenders get their necessary treatment? Are you still kept abreast of developments in the Farrell case at your monthly board meetings?**

The JPB continues to be kept abreast of *Farrell* implementation. For example, on April 29, 2009, at the most recent JPB Board Meeting/Training, we had a two-hour session on the implementation and status of the *Farrell* remedial plan.

As a Board member, we have the opportunity to review and to recommend the treatment and/or programs the youth has had and those programs he/she may still need. By being aware of what programs are coming and holding up the expectation that youth will participate in them, the Board helps advocate for their implementation.



Senate Confirmation  
Robert Cameron, Commissioner  
Juvenile Parole Board  
Responses to Senate Rules Committee Questions  
May 5, 2009

Robert Cameron  
Innocence

**Statement of Goals**

*Prior to the July 2005 Department of Corrections reorganization, juvenile parole issues were heard by the Youthful Offender Parole Board. However, in 2005 the Board of Parole Hearings was established as part of the broad reorganization of the former Youth and Adult Corrections Agency (now known as the California Department of Corrections and Rehabilitation). Initially, the five juvenile commissioners were part of a board with the 12 adult commissioners. However, on January 1, 2007, the five members responsible for juvenile matters were transferred to the jurisdiction of the chief deputy secretary of the Division of Juvenile Justice (DJJ), pursuant to SB 737 (Romero), Chapter 10, Statutes of 2005. As a result, the Juvenile Parole Board is now part of DJJ.*

*The duties of the five members of the Juvenile Parole Board include establishing the terms and conditions of parole for soon-to-be-paroled youthful offenders, determining whether parolees should be returned to an institution for parole violations, and conducting annual reviews to assess progress of an offender.*

*The juvenile offender population under state jurisdiction has decreased markedly over the past decade, from 10,000 to less than 2,000, as counties have been given more responsibility for handling these offenders. There are about 2,100 juvenile parolees. At the same time, partly because of lawsuits, the annual cost of housing juvenile offenders in state facilities has risen to more than an estimated \$250,000, according to the Little Hoover Commission. The overall budget for juvenile parole is about \$30 million a year.*

- 1. What are your goals and objectives as a commissioner? What do you hope to accomplish during your tenure? How will you measure your success as a board member?**

With the interest of public safety in mind, my goal is to parole those wards that have demonstrated that they have gained new insight into their committing offenses and how their actions affected the community. I plan to evaluate their behavior on the living units as well as their program goals set by their individual treatment plans. I will utilize all resources available to me in my evaluation such as existing DJJ program files and psychological reports, to go along with recommendations from program staff.

During my tenure, I would like to play a part in ensuring that those wards that are being considered for parole are better prepared for release to parole by paying particular attention to the areas of education and vocational training and placement. My intent is to give them advice as to how to "close the book right" on their DJJ commitment.

**Senate Rules Committee**

MAY 11 5 2009

**Appointments**



Success is hard to measure as there is no guarantee that the ward you grant parole to will not violate his conditions of parole and come right back. It's always a shock to the stomach to see someone you granted parole to at a parole violation hearing. It's also a sense of great pride when a ward you parole is being brought back to the Board to be considered for an Honorable Discharge and that ward tells you that what you said to him made a difference in his or her life. I will measure my success by getting up everyday with an opportunity to make that impression.

**2. *What, in particular, has prepared you to evaluate the readiness of youthful offenders to parole and be independent citizens?***

I believe a lot of it is life experiences. I have raised my own kids and continue to reach out to youth who may not have fathers or good role models within the community to look up to. Realizing that I am human I work everyday to ensure that my own life does not contradict the message that I continue to give to the youth when given the opportunity. I have been a youth coach for 16 years and a lot of advice that I give outside of the gymnasium comes from at times my own life experiences and choices that I made as a youth. I also had great mentors. This is my passion and it is where I spend my free time coaching and mentoring young men by reaching out to them through my youth sports organization and plugging them into educational and mentoring resources.

**Training and Policies**

*The 2005 reorganization of the correctional system requires new commissioners to undergo a minimum of 40 hours of training within 60 days of appointment and annually thereafter. Senate staff has been told that commissioners participate in trainings provided by DJJ facility and parole staff, including motivational interviewing, a risk assessment and integrated behavior treatment model, and an overview of aggression-replacement training. Staff has also been told that commissioners are being trained on new tools for decision making.*

**3. *Please describe your initial training, including content and details of who provided the instruction and the length of the training. In your view, did it adequately prepare you for your job? Have you received training updates?***

I did receive approximately two weeks of formal training sessions covering the role of the adjudicator, due process, hearing categories, types of hearings, and factors in determining parole readiness. In addition, I was given opportunities to observe different types of hearings. I was allowed to sit second chair with seasoned officers such as Commissioner Joe Compton, the late Ms. Norma Stone and Mr. Winston Beasley. I continue to receive training as well as updates at Board meetings and training sessions. The manner in which I was trained I feel adequately prepared me for the job.

- 4. Much of your work takes place at DJJ facilities. How much time did you spend observing DJJ rehabilitation programs and living conditions during your training? How much time do you spend observing now, and are you able to observe community programs where parolees might be sent?**

As a Commissioner I have had the opportunity to tour several facilities: Pine Grove Youth Fire Camp, Preston, O.H. Close and N.A. Chaderjian youth correctional facilities. I have had the opportunity to see the wards at work during classroom hours and I have witnessed wards in a therapeutic community during class at the substance abuse treatment program at Preston. I have toured group homes, some locally here in Sacramento and I plan to view as many as I possibly can given my hearing schedule. I think it is important that Commissioners have a presence out in the field, and it is useful to observe the support facilities to which some youth parole. I will remain active in this regard.

- 5. Do you receive legal or other guidance on the most effective strategies in dealing with juvenile wards, witnesses, and attorneys when conducting a hearing? Who provides that guidance, and is it available during a hearing?**

The guidance that I have received and continue to receive comes from a knowledgeable team headed by the Executive Officer, the director of DJJ's Office of Court Compliance, and CDCR staff counsel. The support staff is outstanding and guidance has always been available before, during, and after hearings. It's a great team and everyone is always helpful.

- 6. Please describe how you use the board's new decision-making and assessment tools.**

The Youth Assessment Screening Instrument (YASI) is just now becoming available to the Commissioners for review. It is being incorporated into new policies and procedures for decision making. Until then I will continue to utilize the information presented by institutional staff, treatment teams as well as parole staff. I will also review any other relevant information needed to properly assess the parole readiness of wards committed to the DJJ.

- 7. How have you been trained to assess the quality of programming—including the adequacy of classroom instruction—the ward received?**



***What are the uniform criteria used by all commissioners and hearing officers?***

While I have not had specific training to assess the quality of programming I have had the opportunity to view classroom instruction and feel it is as adequate as the instruction my own child was receiving in middle school and high school. I believe that as long as the ward remains compliant and committed to his/her program they have the opportunity to get their high school diploma and/or vocational skills.

I have had the opportunity to sit with all the Commissioners except one and while we all have different styles, we ultimately look at the same general criteria for release. **Program** - how has the ward done in his program? What treatment issues were identified? How did the ward do? Did he complete the programs prescribed, if not why? **Behavior** - how has the ward's behavior been on the living units? Have there been any recent disciplinary issues with staff or other wards? A review of the psychological report would prove helpful in identifying anger issues. **Victims** - What insight has the ward gained regarding his committing offense and its affect on the victims and the community? **Addiction** - if ward has a problem with drugs did he receive treatment? If not, why? **Relapse prevention** - what tools has the ward been given through treatment that will aide him in preventing relapse? **Treatment Team Recommendation** - What is the recommendation and why? **Parole Plans** - are they adequate and appropriate? These are just a few of the criteria that would be examined during the parole hearing.

**Parole Revocation Hearings**

*Under a federal court agreement, in a case known as Valdivia v. Schwarzenegger, adult parole violators have the right to counsel and other due process protections in parole revocation hearings. Juveniles sought similar rights in another federal case referred to by the juvenile plaintiff's initials—L.H. The lawsuit alleged that juveniles accused of parole violations were held for weeks or months without any hearings. As part of the settlement in the case reached last year, DJJ agreed to provide legal counsel for all parolees subject to parole violation allegations. One of the expert witnesses on behalf of offenders said in a 2008 deposition in the L.H. case that, in his view, parole proceedings, "particularly those that extend time in custody or deny or delay parole—deprive incarcerated ward/parolees of fundamental due process rights while failing to fulfill the statutory goal of the Division of Juvenile Justice (DJJ), which is to rehabilitate youth."*

- 8. In what ways are you informed about the availability of alternative sanctions, short of reinstitutionalizing an offender, when considering***



***parole revocation? Are there additional programs that you think should be available?***

I am informed through information presented by parole agents in their reports at the Probable Cause and in person at Revocation Hearings. In addition, my visits to community-based services have also provided me with an understanding of the availability of programs.

***9. Were you consulted about the L.H. settlement regarding juvenile parole revocation? Do you believe that changes needed to be made in the revocation process? If so, please spell out your reasons?***

I was appointed last July after the case had been settled and I have since been a part of numerous meetings regarding the L.H. settlement and status of policy and procedure development. From what I have read in the complaint, changes needed to be made in the old system to ensure due process rights were being met and that treatment and training could be had by all youth. I have enjoyed being apart of implementing these changes in the field.

**Parole Consideration Hearings**

*Hearings are conducted at youth facilities, adult prisons, and parole offices throughout the state. Commissioners sometimes conduct a number of hearings in a single day. "*

***10. Is the quality of the background material you review sufficient to allow you to make informed decisions? How could it be improved?***

I would say the material is sufficient. We have everything that we need to make an informed decision. If there are any questions regarding any of the material being reviewed, program staff continues to aid hearing officers with the answers as they arise.

***11. Please describe how you prepare for a parole consideration hearing. Board members typically review a youthful offender's file on the morning of the hearing. Is this your practice? If so, do you believe it prepares you adequately? How could this process be improved? How has this process changed during your tenure on the board?***

I arrive forty-five minutes before the start of the hearing. I find this gives me enough time to initially review the day's calendar and the files of those wards being considered for parole. At the conclusion of each hearing I will take as much time as needed to review more in depth the file for the next hearing. I find that this adequately prepares me for parole consideration hearings.

- 12. *How do you balance the recommendations of a parole agent or another more experienced commissioner hearing the case with your own judgment of a ward's case for parole? How much weight do you place on the advice of DJJ staff?***

I make my own decisions utilizing all the information the treatment team and parole staff have put together to aide me in determining the ward's parole readiness. The recommendation(s) are considered; however in the end, I utilize my own common-sense approach reviewing all material either for or against the parole of a youthful offender.

- 13. *When you recommend that a parolee be sent to a treatment program, such as substance abuse, as part of their parole plan, how are you informed about the availability and quality of these programs? Please describe the kind of follow-up that occurs when you recommend that a parolee go to a particular program?***

The institutional staff and parole staff have been really good at determining the availability of programs. For example, in most cases if substance abuse is a problem for the youth, a program has already been identified before the youthful offender appears before the Board. The program appears as part of the recommendation. Follow up is performed by parole staff on the outside for those on parole and institutional staff will follow up for those wards in need of a more controlled setting.

### **Time Issues**

*DJJ has a disciplinary system in which additional time can be added before a youth may be considered for parole. Youth can appeal these "time adds" to the board. A national team of experts who reviewed DJJ several years ago recommended that the system of "good time" be enhanced so that youths who participate in programs and stay out of trouble can earn back their disciplinary time and be considered for parole at an earlier date.*

- 14. *From your experience, what are the factors causing increases in the lengths of stay for youthful offenders? What action, if any, would you recommend to address this issue?***

The ward's behavior while in the institution is the main factor contributing to increasing the length of stay for wards. Time adds are given for inadequate behavior and time cuts are given as a motivator for those wards running a great program. The *Farrell* reforms will hopefully reduce the negative behavior by the addition of evidence based programs and smaller living units.



**15. What is the board's policy on factoring in good time or positive behavior? Has the board discussed the best approach to this issue? How do you make this determination?**

For positive behavior a ward can expect in most cases a recommendation from the treatment team to move the parole consideration date up for early consideration for parole. I do feel this is the best approach when dealing with behavior. If there is a penalty for bad behavior there has got to be an incentive for good behavior. In cases where the recommendation is early parole I will review the behavior log looking for history of a substantial period of stabilized behavior which should be noted by a substantial reduction in disciplinary right ups from staff. I then will look at the wards performance in his/her overall program.

**Farrell Lawsuit**

*In 2004 the Administration reached a landmark settlement in the Farrell lawsuit on the conditions of confinement in juvenile facilities. DJJ is supposed to implement a broad array of reforms, including creating smaller living units, improving education and mental health services, and bolstering safety.*

*In February 2008, however, lawyers representing juveniles urged a judge to name a receiver to run the system they said remained broken. And in October 2008 an Alameda County judge stated the state was "in gross violation" of court orders by taking too long to reform its juvenile prison system. But he delayed appointment of a receiver to allow the board time to speed up improvements. Meanwhile, the passage of SB 81 (Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, shifted responsibility to counties for all but the most violent juvenile offenders. In addition, the Little Hoover Commission recently recommended that the state eliminate its juvenile justice operations by 2011.*

**16. How have you been kept abreast of developments in the Farrell case? Do you believe the board should have a role in ensuring that offenders receive the treatment agreed to in the Farrell settlement?**

Yes. The Board meets monthly to discuss new developments and progress being made as per the *Farrell* settlement. I believe the Board should be along the first line of defense to ensure youth are receiving treatment as agreed to. The monthly meetings and trainings continue to arm hearing officers with any new training and/or developments as they arise.

**17. What is your understanding of the timeline for Farrell implementation? Has it been accelerated now that the division has a smaller caseload as**



***a result of SB 81? Are you aware of any impact of the Farrell case on your hearings?***

There is a lot of work being done by a lot of staff to ensure that *Farrell* becomes a reality. Of the six areas identified from what I have seen in the short time I have been on the Board, the plans: education, medical care, mental health care, safety and welfare, sex behavior treatment are well on the road to implementation. I have also been a part of making sure that wards with disabilities have a full understanding at hearings and if an assistant is needed one is provided. I was appointed at a time when the changes were taking place and as far as I can see staff at all levels are working to ensure that timelines are met.

Susan Melanson  
Commissioner

Senate Confirmation  
Susan Melanson, Commissioner  
Juvenile Parole Board  
Responses to Senate Rules Committee Questions  
May 5, 2009

**Statement of Goals**

*Prior to the July 2005 Department of Corrections reorganization, juvenile parole issues were heard by the Youthful Offender Parole Board. However, in 2005 the Board of Parole Hearings was established as part of the broad reorganization of the former Youth and Adult Corrections Agency (now known as the California Department of Corrections and Rehabilitation). Initially, the five juvenile commissioners were part of a board with the 12 adult commissioners. However, on January 1, 2007, the five members responsible for juvenile matters were transferred to the jurisdiction of the chief deputy secretary of the Division of Juvenile Justice (DJJ), pursuant to SB 737 (Romero), Chapter 10, Statutes of 2005. As a result, the Juvenile Parole Board is now part of DJJ.*

*The duties of the five members of the Juvenile Parole Board include establishing the terms and conditions of parole for soon-to-be-paroled youthful offenders, determining whether parolees should be returned to an institution for parole violations, and conducting annual reviews to assess progress of an offender.*

*The juvenile offender population under state jurisdiction has decreased markedly over the past decade, from 10,000 to less than 2,000, as counties have been given more responsibility for handling these offenders. There are about 2,100 juvenile parolees. At the same time, partly because of lawsuits, the annual cost of housing juvenile offenders in state facilities has risen to more than an estimated \$250,000, according to the Little Hoover Commission. The overall budget for juvenile parole is about \$30 million a year.*

- 1. What are your goals and objectives as a commissioner? How have they changed since you were previously confirmed by the Senate Rules Committee? How will you measure your success as a board member?**

My goals and objectives are to ensure all of our youth receive fair hearings and are given opportunities to participate in their hearings in a meaningful way. I welcome the new processes ensuring youth have meaningful participation in all hearings and encourage them to do so. Having attorneys for revocation and/or DDMS is appropriate.

Further, I am currently working on committees to create policies for future Boards, which will provide clear guidelines and written procedures. These tools will ensure consistencies in all areas of the hearing processes. As part of this change, I hope to lead an effort in adopting a policy which will not allow youth to be paroled to the neighborhood of their gang affiliation. If successful, we could measure our success on the reduction in parolee violent injuries and deaths.

Senate Rules Committee

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Appointments

The only change to my goals from those when I was previously confirmed is the written policies and ongoing trainings that we now are provided. When we were part of the larger parole board, our trainings and input into policy were inadequate; we now have complete decision-making roles in policy and in training topics and enjoy a positive working relationship with the Chief Deputy Secretary and other key policy makers in the Division Juvenile Justice (DJJ), Mental Health and other related departments.

- 2. *You have served on this board since 2006. Are there parts of the hearing process you would change to make the process more effective? Are there changes you would make that you believe would result in more rehabilitation and less recidivism?***

The one thing I would like to see the DJJ do better is the rehabilitation of our youths by creating transitional placements that are mandatory for all paroling youth. These placements would include wrap-around services on site by professional staff and they would be located in all regions of the state. This would require funding be diverted to accomplish the transition; however, wrap-around is evidence-based and proven to be successful.

### **Training and Policies**

*The 2005 reorganization of the correctional system requires new commissioners to undergo a minimum of 40 hours of training within 60 days of appointment and annually thereafter. Senate staff has been told that commissioners participate in trainings provided by DJJ facility and parole staff, including motivational interviewing, a risk assessment and integrated behavior treatment model, and an overview of aggression-replacement training. Staff has also been told that commissioners are being trained on new tools for decision making.*

- 3. *How has your training been updated? Are there areas where additional training would be useful?***

The Board receives training at our monthly meetings which was not the case prior to joining DJJ. Along with field and institution staff statewide, we also were mandated to attend all of the trainings mentioned in the question and it has been very helpful as we now are aware of the processes involved in the youths' programming, and we are able to communicate with them using motivational interviewing, locating the risk assessment and incorporating programs into parole conditions which will build on their strengths and support them in areas of need. I include counseling review in all hearings and require individual counseling as one additional method of support during parole. We are able to add any topic we would like to learn more about, and our staff in Sacramento continues



to identify areas we need to update. We enjoy these opportunities and maintain an open dialogue with others in DJJ for new subject matter.

- 4. Much of your work takes place at DJJ facilities. How much time did you spend observing DJJ rehabilitation programs and living conditions during your training? How much time do you spend observing now, and are you able to observe community programs where parolees might be sent? Please be specific.**

With fewer cases to be heard, I find more time to spend on the units or visiting placements and have enjoyed many hours learning more about our programs and services. In any given month, there is opportunity, approximately 10-15 hours, to observe programs and visit units or community programs and services. Time varies per month depending on travel time for hearings which fluctuates significantly. I am pleased to see some changes and take pleasure in visiting with the youth informally when visiting the units. I do visit the group homes and have spent time in programs we offer in the communities as well. I have visited the Phoenix House in both Los Angeles County and Orange County, Homeboy Industries in Los Angeles, College Day Program, Long Beach, Embassy Group Homes in the Inland Empire just to name a few. I also attend as many high school graduations as possible and speak when invited at Victim Awareness Ceremonies.

- 5. Do you receive legal or other guidance on the most effective strategies in dealing with juvenile wards, witnesses, and attorneys when conducting a hearing? Who provides that guidance, and is it available during a hearing?**

We receive legal and other guidance at any time we need it, including during our hearings. We contact Chuck Supple, the Juvenile Parole Board (JPB) Executive Officer, the project manager for LH/Farrell implementation, DJJ Legal Counsel, or the policy unit. We receive immediate information on any issue, legal or policy matter.

- 6. Please describe how you use the new decision-making and assessment tools.**

The Youth Assessment Screening Instrument (YASI) recently became available for the Board to review. I participate on the committee that is incorporating this into new parole decision making policies and procedures. They will be a tremendous help in determining parole readiness.

- 7. How have you been trained to assess the quality of programming—including the adequacy of classroom instruction—the ward received? What are the uniform criteria used by all commissioners and hearing officers?**

Along with the training opportunities mentioned earlier in this document, my background is working with county-level programs and community-based programs. I am fortunate in this area and only need periodic updates to what is available to our youth. We are encouraged to visit programs and education in the institutions, and I take every opportunity to do so. This allows me a chance to learn what to expect of the youth when they come before me. The criteria that Commissioners use are found in the parole documents created by the treatment team. Those include, but are not limited to, Substance Abuse, Gang Awareness, Victim Awareness, his/her Relapse Prevention Plan, Parole Plan, and any Mental Health treatment summary, if applicable. The treatment goals and objectives and how well they met them are the basis of our determination in addition to other factors.

- 8. At your 2007 confirmation hearing, you stated that to improve programming DJJ would need a somewhat different structure. Is that still the case? If so, please explain. What recommendations have you provided, if any, to improve programming?**

The structure has changed as a result of *LH* and *Farrell* and we see improvement at the unit level. I recently visited a unit at Heman G. Stark and was pleased to see a former “temporary detention” area is now used as a small group programming area. Cell doors are not locked in this unique area while in use by the youth.

### **Parole Revocation Hearings**

*Under a federal court agreement, in a case known as Valdivia v. Schwarzenegger, adult parole violators have the right to counsel and other due process protections in parole revocation hearings. Juveniles sought similar rights in another federal case referred to by the juvenile plaintiff’s initials—L.H. The lawsuit alleged that juveniles accused of parole violations were held for weeks or months without any hearings. As part of the settlement in the case reached last year, DJJ agreed to provide legal counsel for all parolees subject to parole violation allegations. One of the expert witnesses on behalf of offenders said in a 2008 deposition in the L.H. case that, in his view, parole proceedings, “particularly those that extend time in custody or deny or delay parole—deprive incarcerated ward/parolees of fundamental due process rights while failing to fulfill the statutory goal of the Division of Juvenile Justice (DJJ), which is to rehabilitate youth.”*



- 9. *In what ways are you informed about the availability of alternative sanctions, short of reinstitutionalizing an offender, when considering parole revocation? Are there additional programs that you think should be available?***

There are never too many community-based programs; however, in some of the more rural areas of the state this is a more serious issue than in highly populated areas. If I am not provided suitable alternatives or if I believe alternatives have not been considered, I ask the Agent of Record who is presenting the case (in revocation hearings) for other options we might consider. It is not unusual for me to make such a request, especially in mental health cases. It would be helpful to our population if we incorporated domestic violence programs both in the institution and on parole. If that program included parenting courses, it would be ideal.

- 10. *Were you consulted about the L.H. settlement regarding juvenile parole revocation? Do you believe that changes needed to be made in the revocation process? If so, please spell out your reasons.***

The Board was kept apprised throughout the settlement negotiations and the members were provided ongoing opportunities to ask questions and give input where appropriate. I feel very strongly that we needed to make the changes in our hearing processes and am pleased with the changes we have implemented. Youth do have attorneys in all hearings that could result in incarceration. It is most appropriate that attorneys challenge any hearing officer that is considering taking a fundamental right from an individual. Today, the evidence is much clearer and witnesses must be present if the evidence is to be considered. Addressing "effective communication" allows for every hearing officer to weigh the ability of the youth to have "meaningful" input during the hearings.

### **Parole Consideration Hearings**

*Hearings are conducted at youth facilities, adult prisons, and parole offices throughout the state. Commissioners sometimes conduct a number of hearings in a single day. "*

- 11. *Is the quality of the background material you review sufficient to allow you to make informed decisions? How could it be improved?***

The information we receive is found in the youth's files with few exceptions. We have documentation from initial intake (including history of arrests and county level placements), treatment in DJJ, education and restorative justice, and other information through, and including, the parole report generated by the treatment team. The information is comprehensive and professional in substance.



- 12. Please describe how you prepare for a parole consideration hearing. Board members typically review a youthful offender's file on the morning of the hearing. Is this your practice? If so, do you believe it prepares you adequately? How could this process be improved? How has this process changed during your tenure on the board?**

The information used in preparing for hearings is organized and categorized in DJJ in a specific manner, thereby making it a routine review of the documents to gain insight into areas of strengths as well as weaknesses. This information includes family history, (including any Child Protective Service referrals for abuse or neglect) criminal history, placements at the county level, mental health needs and more. Every case is unique, yet all cases are somewhat similar in nature.

Since the time I first was appointed, my focus has been, and continues to be, where did this youth enter the criminal justice system? Was it due to gangs, abuse and neglect, or some other manner? Reviewing those issues will provide necessary insight to have a meaningful discussion during the hearing and will greatly assist the hearing officers in setting conditions of parole.

- 13. How do you balance the recommendations of a parole agent or another more experienced commissioner hearing the case with your own judgment of a ward's case for parole? How much weight do you place on the advice of DJJ staff?**

Just as in any profession, some agents and treatment staff are very dedicated and do exceptional work and others may perform adequately, but are not as detailed. I weigh the information based on personal knowledge and information gained during executive session with my colleagues on the Board. I think very highly of all of the other hearing officers who serve on panels with me and continue to learn from them.

- 14. When you recommend that a parolee be sent to a treatment program, such as substance abuse, as part of their parole plan, how are you informed about the availability and quality of these programs? Please describe the kind of follow-up that occurs when you recommend that a parolee go to a particular program.**

We receive information from parole agents at the time of hearings about the availability and quality of treatment programs. We receive updates at annual review hearings of youth on parole, as well as through encounters with the wards during the revocation process.

### **Time Issues**

*DJJ has a disciplinary system in which additional time can be added before a youth may be considered for parole. Youth can appeal these "time adds" to the board. A national team of experts who reviewed DJJ several years ago recommended that the system of "good time" be enhanced so that youths who participate in programs and stay out of trouble can earn back their disciplinary time and be considered for parole at an earlier date.*

- 15. From your experience, what are the factors causing increases in the lengths of stay for youthful offenders? What action, if any, would you recommend to address this issue? Has your view changed since you were first confirmed?**

Youth do receive time adds based on their behavior and/or lack of participation in programs. It has been my experience that the youth earn the time adds by acting out in an unacceptable way. I do agree with the time cuts and encourage youth in my hearings to work towards a time cut. My view has not really changed; however, I am pleased with our new process for hearing these appeals.

- 16. What is the board's policy on factoring in good time or positive behavior? Has the board discussed the best approach to this issue? How do you make this determination?**

There are no policies regarding factoring in good time; however, we all agree with crediting good time with time cuts. The treatment team makes the recommendation to the Board when they bring him/her up for parole. Also, the Board is present at the first and last annual reviews where we can and do make written comments of good work.

### **Farrell Lawsuit**

*In 2004 the Administration reached a landmark settlement in the Farrell lawsuit on the conditions of confinement in juvenile facilities. DJJ is supposed to implement a broad array of reforms, including creating smaller living units, improving education and mental health services, and bolstering safety.*

*In February 2008, however, lawyers representing juveniles urged a judge to name a receiver to run the system they said remained broken. And in October 2008 an Alameda County judge stated the state was "in gross violation" of court orders by taking too long to reform its juvenile prison system. But he delayed appointment of a receiver to allow the board time to speed up improvements. Meanwhile, the passage of SB 81 (Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, shifted*

*responsibility to counties for all but the most violent juvenile offenders. In addition, the Little Hoover Commission recently recommended that the state eliminate its juvenile justice operations by 2011.*

- 17. *How have you been kept abreast of developments in the Farrell case? Do you believe the board should have a role in ensuring that offenders receive the treatment agreed to in the Farrell settlement?***

The Board has been kept abreast of the developments, and again, we have had every opportunity to weigh in on changes or needs we might see. I believe we are the "last eyes" to ensure DJJ is doing and has done everything we can for the youth in our care, and if we can further weigh in on treatment, I am happy to do so.

- 18. *What is your understanding of the timeline for Farrell implementation? Has it been accelerated now that the division has a smaller caseload as a result of SB 81? Please describe what impact, if any, the Farrell case has had on your hearings.***

My understanding is that there has been some acceleration in implementation and we are realizing change in our institutions every day. The smaller caseload is helping staff to achieve the goals and I expect to see all youth immersed in treatment. The exceptions will be those few who will continue to refuse any education or treatment while they are in the criminal mindset. It takes time to reach some of the youth, but change is happening.



## Statement of Goals

The California Department of Public Health's (CDPH) mission is to optimize the health and well-being of the people in California. CDPH does this through programs related to chronic disease prevention, environmental health, family health, licensing of health facilities, prevention and control of infectious diseases, and public health emergency preparedness.

The Chief Deputy Director of Operations is responsible for providing leadership and direction for technology, financial services, human resources (HR), internal audits, civil rights, procurement, leadership and workforce development, and legal services.

The department has about 3,300 staff and a budget of approximately \$3.3 billion (about \$1.68 billion in state funds).

1. What are your goals and objectives as chief deputy director? What is your strategy for reaching your goals? How will you measure your success?

As Chief Deputy Director of Operations I am responsible for legal services, information technology, internal audits, civil rights, leadership and workforce development and administrative functions of budgets, accounting, program support, and HR. Before I address my goals and objectives as Chief Deputy Director of Operations, I would like to provide you some highlights of what we have accomplished in Operations in 2008.

## 2008 Accomplishments

- Rebuilt almost the entire Operations management team. Filled vacancies including key management positions. Seven out of ten of the Operations executives have turned over—the Chief Deputy Director of Operations; Deputy Director, Administration; Chief, Financial Management Branch; Chief, Human Resources; Chief, Internal Audits; Chief, Program Support Branch; and Chief Office of Civil Rights.
- Fully staffed and trained the Budget Office.
- Successfully completed the preparation and development of the 2009-10 Governor's Budget including countless budget drills.
- Designed and implemented the 18 Point Plan of financial accountability to improve processes to avoid overspending appropriations.
- Established four budget work groups to sort through and resolve major budget issues in the Genetic Disease Screening Program Estimate, the AIDS Drug Assistance Program (ADAP) Estimate, the Maternal, Child, and Adolescent Health

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(MCAH) Title V Fund Condition Statement and the Emergency Preparedness Office (EPO) Budget.

- Established the Administration User Group to provide a forum to discuss, resolve, and road test departmental issues.
- Put in place an Internal Audits charter.
- Resolved CDPH unfunded priorities to make strategic investments in Human Resources, Accounting, Office of Public Affairs, Legislative and Governmental Affairs, the Office of Regulations, and the Office of Leadership and Workforce Development.
- Completed the Fresno Office Consolidation Project, merging three programs and locations in to one.
- Established a CDPH Small Business Advocate.
- Created an ad hoc working group to resolve the Los Angeles laboratory building and relocation issues.
- Developed and implemented New Employee Orientation, with the first training in mid-March 2009.
- Identified gaps in mandated Basic Supervision Training and instituted trainings.
- Hired a CDPH Training Officer.
- Implemented an Invoice Tracking System and reports in Accounting and met the processing timeframes of the Strategic Plan.
- Implemented Administration dashboard reports for objectives in the Strategic Plan.
- Created and submitted the first annual Information Technology (IT) Capital Plan to the State Chief Information Officer.
- In collaboration with the Department of Health Care Services (DHCS), established the IT Shared Services Committee to facilitate joint IT governance.
- Partnered with CDPH programs to implement the following web-based applications:
  - Center for Health Statistics Request Tracking System
  - WIC Vendor information Exchange
  - Office of AIDS Local Evaluation Online System
  - Health Facility Consumer Information System

## 2009 Goals and Objectives

- Successfully present and defend the CDPH 2009-10 Budget before the Legislature.
- Achieve the specific goals and objectives in the Strategic Plan.
  - Goal 4: Promote Quality of the Workforce and Workplace Environment.
  - Goal 5: Improve Effectiveness of Business Functions.
- Implement a fully operational Office of Leadership and Workforce Development.
- Maintain a low vacancy rate in Operations.
- Implement an HR RPA and Contract/Procurement Tracking System to improve CDPH's business processes.
- Relocate the Los Angeles laboratory staff.
- Finalize and make Intranet-available the updated Public Health Administrative Manual.
- Investigate and resolve Office of Civil Rights complaints at the lowest level and within mandated timeframes.
- Establish a Travel Expense Claim Work Group to resolve reimbursement issues.
- Continue to implement the Regulations Priority List and Management Plan.
- Successfully prepare and develop the 2010-11 Governor's Budget.

*What is your strategy for reaching your goals?*

Over the years, I have honed and developed my approach to lead, manage, and make organizations better. My approach consists of a set of values and principles that I believe in and use due to their proven results. First, leadership is a process of getting things done through people. I recognize the value and power of the workforce and I stress the importance of communication and teams, team work, and what I refer to as "WOW" projects. It is critical to unleash the talent of employees and empower them to do their jobs.

Second, I inspire the trust and enthusiasm of staff through character, competence, and accountability. I am honest, ethical, and straightforward. Accountability means clarity of purpose and clear expectations, whether through a strategic plan, goals and objectives, or an ad hoc work group. I demand competence and accountability in what we do. Do what we say, deliver on promises and meet expectations. Honor and follow the chain of command and adhere to the rule of "no surprises."



Third, be the master of change! Be a smart, calculated risk taker. Make decisions. Know who your customers are and be customer service driven. Be a consensus builder that engages business partners and stakeholders. Lastly, use good judgment and common sense in all that we do.

*How will you measure your success?*

I will measure my success through specific action plans, defined product deliverables, expressed clear expectations of my management team, in-place dashboard reporting, and holding people accountable to do their jobs.

2. What are the highest priorities of DPH? How will they be accomplished?

The highest priorities for CDPH are reflected in our Strategic Plan. These are:

- Goal 1: Increase quality and years of healthy life, reduce disparities and promote health equity.
- Goal 2: Prepare for, respond to, and recover from emergency public health threats and emergencies.
- Goal 3: Improve quality and availability of data to inform public health decision-making.
- Goal 4: Promote quality of the workforce and workplace environment.
- Goal 5: Improve effectiveness of business functions.

From my perspective, the highest priority is recruiting, hiring, developing, and retaining our public health workforce. Without an experienced, qualified, and sufficient workforce, CDPH will not be able to meet its mission to optimize the health and well-being of the people in California. CDPH Strategic Plan Goal 4 has the following objectives related to workforce:

**Objective 1:** Increase to 50% the percentage of CDPH employees who receive a written annual performance review and Individual Development Plan by their direct supervisor by 06/30/09.

**Objective 2:** Increase to 100% the percentage of CDPH employees who receive a written annual performance review and Individual Development Plan by their direct supervisor by 06/30/10.

**Objective 3:** Increase to 40% the percentage of employees surveyed who rate the CDPH as "very good" or "good" on an anonymous survey of ten aspects of the workplace environment by 06/30/09.

The ten aspects include:

- Organizational image/perception of others (peers, clients, community)
- Leadership
- Work conditions
- Treatment of employees
- Rewards and recognition
- Teamwork
- Supervision
- Job satisfaction
- Customer focus
- Overall satisfaction

Another top priority is Strategic Plan Goal 5: Improve Effectiveness of Business Functions. Specific objectives include:

**Objective 1:** Increase by 10% the number of pending regulation packages filed with the Secretary of State within 36 months of development by 06/30/09.

**Objective 2:** Increase by an additional 10% the number of pending regulation packages filed with the Secretary of State within 36 months of development by 06/30/10.

**Objective 3:** Increase to 85% the percentage of invoices processed by Accounting within 30 days of receipt in the Accounting Section by 06/30/09.

**Objective 4:** Increase to 90% the percentage of invoices processed by Accounting within 30 days of receipt in the Accounting Section by 06/30/10.

**Objective 5:** Increase to 85% the percentage of RPAs receiving approval within 30 days of receipt in the Human Resources Branch (HRB) by 06/30/09.

**Objective 6:** Increase to 95% the percentage of RPAs receiving approval within 30 days of receipt in the HRB by 06/30/10.

**Objective 7:** Increase to 85% the percentage of contracts processed within 30 days of receipt by Contract Management Unit by 06/30/09.

**Objective 8:** Increase to 95% the percentage of contracts processed within 30 days of receipt by Contract Management Unit by 06/30/10.

**Objective 9:** Increase distribution of EFRs to programs to 100% by December 1, 2008 and ensure 100% are distributed monthly thereafter.

**Objective 10:** Increase distribution of fiscal year 2008-09 budgets to program to 100% within 45 days of budget enactment.

*How will they be accomplished?*

These priorities will be accomplished through the hard work and dedication of our employees, CDPH's most important and valuable assets. Working as teams, we have developed specific action plans or what I call documents of accountability. To illustrate, I have attached two very specific action plans for Objectives 3, 4, and 9 for improving business functions. These action plans identify the activity, person accountable, timeframes, resource requirements, and completion date. My management team and I use these action plans to track progress toward accomplishing our goals and objectives.

### **Creation of Department of Public Health**

SB 162 (Ortiz), Chapter 241, Statutes of 2006, established DPH within the existing Health and Human Services Agency, and statutorily transferred certain responsibilities from the former Department of Health Services (renamed the Department of HealthCare Services ) to the new DPH, effective July 1, 2007.

The creation of a separate DPH was intended to elevate the visibility and importance of public health issues. It was also intended to result in increased accountability and improvements in the effectiveness of DPH programs and the Department of Health Care Services programs by allowing each department to administer a narrower range of activities and focus on its respective core missions. Prior to the creation of the new department, several studies concluded that public health programs and goals were overlooked and overshadowed by the Medi-Cal program at the Department of Health Services and that California suffered from a lack of strong and effective state public health leadership.

3. How would you evaluate DPH almost two years after its creation? If the reorganization's intent was to elevate the visibility and importance of public health issues and to increase the accountability and effectiveness of public health programs, where has significant progress been achieved, and where does the most work still need to be done?

From an Operations perspective, significant progress has been made in the infrastructure of CDPH that supports our public health programs. CDPH has made major improvements in program and fiscal accountability. Over the last year, CDPH has completed or is in the process of completing business process improvement efforts in the areas of streamlined regulations, accounting invoice payments, human resources transactions, and contract monitoring. To go along with this, CDPH has made strategic investments in the areas of regulations, public affairs, human resources, contracting, and workforce planning and development to right size our efforts.



Regarding where does the most work still need to be done; I would say more needs to be done to fill our vacancies to ensure the maximum gain for public health. Impressively with the hundreds of job classifications we use to support hundreds of public health programs, our overall vacancy rate is 9.5 percent (8.8 percent for Operations). We need to continue to strengthen our efforts in short and long term workforce and succession planning.

### **State's Fiscal Situation**

The state of California is experiencing an unprecedented budget crisis, which has affected every aspect of state government. In 2008-09, the department sustained a 12 percent reduction (\$46 million) in General Fund.

On July 31, 2008, the governor issued Executive Order S-09-08, which mandated state agencies to implement a hiring freeze, eliminate overtime, terminate all temporary employees, and suspend all personal services contracts.

On December 19, 2008, the Governor issued Executive Order S-16-08, in which he instructed agencies to adopt a plan to furlough state employees and supervisors.

4. Given the reduction of staff hours worked and restrictions on personal services contracts, how will the department ensure it is able to meet the needs of its constituents in a timely and efficient manner? Are there any backlogs as a result of the staff cuts?

Furloughs and the restrictions on the use of personal services contractors, students, and retired annuitants have had an impact on the Department's operations. When you take two days per month and 10 percent over a month per year, from productivity, there are consequences. This poses another challenge when managing the Department's resources while not compromising the Department's strategic goals and objectives. This may mean that some workload is submitted later than expected or is of less quality than is desired. CDPH will strive to meet the most important goals and objectives consistent with the expectations of our stakeholders.

5. How does the department prioritize its responsibilities, particularly given current budgetary realities?

CDPH will prioritize its responsibilities within budget resources by following these four guiding principles:

- Fulfilling our legal and statutory obligations regarding the health and safety of the citizens as its first priority;
- Acting on behalf of the citizens by preparing for and responding to emergencies;
- Adhering to our Strategic Plan and its five goals:
  - Increase quality and years of healthy life, reduce disparities, and promote health equity;

- Prepare for, respond to, and recover from emerging public health threats and emergencies;
  - Improve quality and availability of data to inform public health decision-making;
  - Promote quality of the workforce and workplace environment;
  - Improve effectiveness of business functions.
- Implementing discretionary activities.

### **Department's Strategic Plan**

The department has developed a strategic plan for 2008-10 and has identified the following priorities: (1) increase quality and years of healthy life, reduce disparities, and promote health equity; (2) prepare for, respond to, and recover from emergency public health threats and emergencies; (3) improve quality and availability of data to inform public health decision making; (4) promote quality of the workforce and workplace environment; and (5) improve effectiveness of business functions. (Specific objectives and benchmarks have been identified for each priority.)

6. Please give examples where the department is using its strategic plan to advance department goals. Please be specific.

With SB 162, the Legislature established the following expectations for CDPH:

- Elevate the visibility and importance of public health issues in the policy arena; and
- Increase accountability and ensure program effectiveness for public health.

#### Elevate the visibility and importance of public health issues in the policy arena

The CDPH Strategic Plan directly supports this expectation through Goals 1 through 3. In addition to the goals described below, CDPH has been able to accomplish this expectation through the departmental website and through participation in local, state, and federal meetings and groups.

- **Goal 1:** Increase quality and years of healthy life, reduce disparities and promote health equity.  
This goal provides visibility to key public health programs that improve the health of the population. This goal mirrors the national Healthy People Goals to (1) increase quality and years of healthy life and (2) eliminate health disparities. In the CDPH Strategic Plan, we have chosen 13 of the more than 400 Healthy People objectives to highlight during this two-year strategic plan. While we track progress for California for more than 100 of the Healthy People objectives (<http://www.cdph.ca.gov/data/indicators/goals/Pages/HC2010Progress.aspx>), for the 13 highlighted in the CDPH strategic plan we are doing additional programmatic activities to raise awareness and improve outcomes.



- **Goal 2:** Prepare for, respond to, and recover from emerging public health threats and emergencies.

This goal provides visibility to emergency preparedness and other emerging threats as highlighted by the Governor as a reason for creating the Department of Public Health. This goal is reflected in the department's participation in a variety of preparedness and response issues. An example includes CDPH participation in efforts to address the emerging threat of climate change by activities such as participation in the Strategic Growth Council.

- **Goal 3:** Improve quality and availability of data to inform public health decision-making.

Translating data into information and disseminating that information is a critical function of CDPH. Both the creation of the department and the presence of Goal 3 in the strategic plan have raised the visibility of public health in this policy arena.

#### Increase accountability and ensure program effectiveness for public health

The CDPH Strategic Plan directly supports this expectation through goals 4 and 5.

- **Goal 4:** Promote quality of the workforce and workplace environment

CDPH is committed to instituting performance-based measurement in all that we do. This goal allows us to highlight workforce development with respect to performance-based measurement. It also allows improved efficiency for training that is required both by state law and for the day to day operations within the department. These activities will increase accountability and ensure program effectiveness over time.

- **Goal 5:** Improve effectiveness of business functions

This goal addresses program accountability and effectiveness in relation to budgets, accounting, contracting, personnel actions, and regulations development. Meeting this goal will directly address legislative expectations.

#### CDPH Strategic Plan and Performance Measurement

The CDPH Strategic Plan is a two-year plan with targets for each objective. The department will report on progress toward these targets after July 1, 2009, and after July 1, 2010. CDPH is preparing to develop its next strategic plan that will become effective July 1, 2010. CDPH has not yet set a fixed schedule for strategic plan revisions.

CDPH is monitoring its progress toward objective targets through several mechanisms:

- For objectives that collect quarterly data, that data is reported to the Strategic Planning team and is compiled for internal use.
- CDPH programs developed action plans for each objective. These action plans address at least one element that would affect the program's ability to move the



performance indicator. The action plans are not comprehensive work plans for the objective. The department has been identifying best practices in the action plan process and programs may continually review and update as appropriate based on the performance metrics.

- CDPH meets monthly with DHCS to engage in business and strategic planning.
7. Another of the objectives in the strategic plan is to increase the number of regulation packages annually filed with the Secretary of State. In its analysis of the 2008-09 Budget, the Legislative Analyst's Office (LAO) found that DPH was behind in its development and promulgation of regulations. LAO argued that, therefore, state laws were not being enforced or applied consistently across the state. Since March 2008, 10 regulation packages have been filed with the Secretary of State. What steps has the department taken to increase the number of regulations filed with the Secretary of State?

The Office of Regulations within the Office of Legal Services leads implementation of Objectives 1 and 2 of Goal 5 of the Strategic Plan. Over the last year, following a top-to-bottom review and business process improvement analysis, the Department revamped its internal rulemaking process. Major improvements include: (1) sponsoring a reengineering process review; (2) developing a new internal rulemaking process; (3) developing a regulation priority list and management plan; (4) developing project management teams; (5) training staff on the Office of Administrative Law's rulemaking process, the new internal rulemaking process, and project management skills; (6) updating the external regulation handbook and the internal Policy and Procedures; (7) creating a database to track regulation packages throughout the entire rulemaking process; (8) reporting monthly on the status of process improvements; and (9) redirecting and filing six additional positions to work in the Office of Regulations.

From January 2008 through March 2009, the Office of Regulations filed 15 regulation packages with the Secretary of State.

### **Fiscal Accountability**

One of the objectives in the strategic plan is to increase distribution of the budget-related information to department programs in a timely manner. In the summer of 2008, the department had to ask for \$2.5 million back from local health departments (for emergency preparedness) because program staff had allocated awards to local health departments that were greater than what had been included in the 2007 Budget Act. Similarly, in the summer of 2008, the department notified the Legislature of a deficiency funding request due to the department entering into contract agreements for the BabyBIG program that exceeded the 2007 Budget Act appropriation.

8. What steps has the department taken to meet the goals of ensuring that program staff has correct budget information?

CDPH takes seriously our responsibility to be prudent and accountable in developing and monitoring expenditures. I take great pride having the background and experience to lead CDPH in this effort.

The Department's 2008-2010 Strategic Plan includes specific measurable goals and objectives for the Administration Division in the areas of processing requests for personnel actions, invoices, contracts, and purchase orders. In addition to these areas, CDPH set a goal to provide budget authority documents to programs within 45 days of budget enactment.

CDPH demonstrates its commitment to be an accountable and transparent organization through our "18-Point Plan." The Plan is the heart of CDPH budget and fiscal accountability and includes:

- Providing mandatory training to all executive staff on Budget Act roles and responsibilities.
- Providing budgets to programs 45 days after enactment of the Budget Act.
- Meeting with each Center/Program to review the budget including appropriations, projected below the line administrative overhead costs, authorized positions, provisional language, and any reporting requirements.
- Reviewing program budgets and remove excess expenditure authority.
- Establishing a quarterly "fiscal health report card", the offices of Accounting and Budgets will meet quarterly with Centers/Programs to review their budget, current year spending based on expenditure projections, budget authority needs, fee revenue, fund condition statements and related fiscal issues.
- Requiring Centers/Programs to present quarterly to the Directorate changes to budgets and any new requests for increased or decreased expenditure authority.
- Providing ongoing training on budget and budget related drills throughout the fiscal year.
- Distributing the Expenditure Forecast Report (EFR) to Centers/Programs on a monthly basis.
- Providing written instructions and step by step EFR training.
- Holding Centers/Programs accountable for accurate estimate projections. Accounting and Budgets will analyze these projections. Administration will report monthly to Executive Staff. Where appropriate, corrective action will be mandated to live within appropriations.



- Finalizing reimbursement contracts report by June 1, 2008 and distributing to Executive Staff. On an ongoing basis, distributing to Executive Staff on a quarterly basis beginning October 2008 and then monthly until the end of the fiscal year.
- Reconciling to appropriations on a monthly basis and report identified problems to the Chief, Financial Management Branch and the Deputy Director of Operations.
- Providing California State Accounting and Reporting System (CalSTARS) training to Centers/Programs to assist them to understand and utilize accounting reports such as expenditure, reimbursement/revenue, grant/project, document and detail transaction reports.
- Ensuring Accounting and Contract managers attend Center Program executive staff meetings at least monthly.
- Briefing the California Health and Human Services Agency, the Department of Finance, and the Legislature on Progress.

CDPH issued fiscal report cards to Centers/Programs for the first eight months of the 2008-09 fiscal year and identified no overspent Special Funds, General Funds, or Federal Funds.

9. The DPH has a budget of \$3.3 billion of which \$1.4 billion is funded from over 35 special funds, mostly collected from "fee." How does the DPH analyze its special funds fee structure for the various programs to determine program costs and staffing? Please provide a specific example.

The broad financial management principles that we apply to all fund sources are:

- While the department is responsible for reporting to the Legislature based on program budgets and appropriations, for internal management purposes we must convert the program budget to organizational budgets.
- Organizational budgets and program budgets are built into the Budget Utilization Development System (BUDS). We ask program staff to use CALSTARS as their source of information for the day-to-day management of the expenditures against the budget.
- The department decentralizes its budget management and a guiding principle is that the department's resources are best managed in this way.
- Decentralization is at the branch level as diminishing returns set in at any lower level for the workload involved in establishing and managing budgets.



- We attempt to make this as easy as possible by posting all the relevant CALSTARS reports online in multiple formats so that staff can download information electronically for purposes of additional analysis or reporting.
- To forecast expenditures, the Administration Division established a tool (the Expenditure Forecast Report) that is accessed electronically. The EFR projects costs based on analyses of historical costs within this department. If the pre-defined algorithms do not suitably project expenditures for an organization, that organization is expected and allowed to substitute a better forecast.
- All of the financial information---both programmatic and organizational---is routinely reviewed by the Administration Division, the Executive Management Team and Senior Management to ensure compliance with all laws and strategic as well as performance objectives.
- This is done at the appropriation level by fund and where corrective action is required, immediate action is taken.

As a specific example, the Department reviewed the Health Statistics Special Fund for solvency. For the 2008-09 Governor's Budget, the Department was not projecting an adequate reserve based on its revenues and expenditures. During the development of the 2009-10 Governor's Budget, the Department applied the above principles to evaluate the fund's projected expenditures. The program was able to update projected expenditures by identifying projects that were ending and additional cost savings measures. The 2009-10 Governor's Budget projects an ample reserve without needing to increase fees.

10. Over \$1.6 billion of the DPH budget is funded with federal funds, including grants for the Women, Infants and Children Supplemental Food Program (WIC), Maternal and Child Health Block Grant Funds and many other smaller special grants. Concerns regarding the tracking of these funds have been raised during budget deliberations in the Legislature. For example, the MCH Program had difficulty last year in knowing how much of the grant funds were unexpended and available for other purposes, including funds that can be used to backfill for General Fund. Has the DPH made changes to better track these existing federal funds?

The Department continues to improve upon its business practices to account for the activity of existing federal funds. In addition to continuous review and collaboration between program and the Accounting Section, the Department also has a point in the "18 Point Plan" specific to federal funds.

- Establishes new reporting requirements for acceptance of unbudgeted, new federal funds, special funds and grants. This includes application for new funds and acceptance of new funds.

Additionally, the Department formed workgroups to address and rectify the issues with tracking the federal funds.

- MCAH Title V Workgroup
  - Outcome: Developed a fund condition statement document as a check/balance for the Title V funding.
- Genetic Disease Screening Workgroup
  - Outcome: Utilized the estimate process to develop a local assistance item to better document caseload related costs.
- Emergency Preparedness Office Workgroup
  - Outcome: Re-scheduled federal funds based on an analysis of actual grant awards and expenditures dating back to before the large increase in federal funding. This allows the Department to plan better and manage costs.
- AIDS Drug Assistance Program Workgroup

11. The federal stimulus package—American Recovery and Reinvestment Act—proposes significant funding for water, prevention, wellness, immunizations and many other areas. A portion of these federal funds are to be provided via a competitive grant process whereby the federal Centers for Disease Control and other federal entities will make state awards. As the Chief Deputy of Administration, how will you and DPH track and review receipt of these special federal stimulus funds?

CDPH has a process in place for tracking federal stimulus funds. The department has designated both a policy lead and a fiscal lead for economic stimulus, who work together to coordinate federal stimulus activities across the department. These activities include monitoring the availability of stimulus funds for which the department may be eligible to apply, tracking on a daily and weekly basis applications for and receipt of funds, and reporting daily and weekly to the California Health and Human Services Agency on the status of funding.

Fiscal elements we track for all economic stimulus funds include the federal funding agency, the CDPH program applying, application deadlines, amounts applied for, amounts received, status of Section 28 or other spending authority requests, and terms and conditions of the awards. We track these elements both for funds allocated to California on a formula basis and for economic stimulus funds made available by federal agencies on a competitive grant basis. We monitor daily for new funding announcements for competitive funds related to public health.

As economic stimulus funds are allocated to local governments or contracted to other entities, we will ensure appropriate tracking mechanisms via the allocation agreements or contracts. CDPH will track all economic stimulus funds, whether spent directly by CDPH or by another entity, as a separate category of funding.



We will comply with state and federal requirements, and believe in an open and transparent process.

### **Streamlining Contracts with Local Health Departments**

LAO, in a report released in February 2008, concluded that the “state’s current process for administration and funding of over 30 public health programs at the local level is fragmented, inflexible and fails to hold local health jurisdictions accountable for achieving results.” LAO recommended increasing flexibility of funding to counties (local health departments) by consolidating certain public health programs into a block grant, developing a model consolidated contract for other public health programs and using this consolidated contract with counties, and developing outcome measures for public health programs. Under a pilot program, Placer County consolidated 16 health programs into a single contract, thereby saving over 1,600 hours of administrative workload.

12. Do you agree with LAO recommendations? Why or why not?

I agree with recommendations and contract simplification makes good business sense. However, the issue of contract simplification has been around for decades and it is not as “simple” as it appears. The Department’s Strategic Plan includes as its fifth goal, the improvement of business functions. As such, we are committed to continuously improving our business processes. As with any changes to business practices, the Department is taking a systematic approach to streamline its current processes. But at the same time, we want to score some easy wins in contract simplification.

The Department is collaborating with the California Conference of Local Health Officers (CCLHO), and the County Health Executives Association of California (CHEAC) on a Contract Simplification Project.

- April 2008: The Department, CCLHO, and CHEAC joined to discuss the administrative burdens to local health departments (LHDs) resulting from the diversity in contracting and business practices among departmental programs.
- July to September 2008: CDPH conducted key informant interviews with five Departmental programs to gain an understanding of internal contracting and business practices across programs and funding streams.
- October to December 2008: CDPH conducted an electronic survey of 15 departmental programs to develop a baseline of contracting and business practices, identify diversity in business practices, and solicit solutions.
- November 2008 to February 2009: CDPH conducted key informant interviews with six LHDs to identify burdensome or inconsistent departmental business practices, how these affect LHDs, and possible solutions.



- April 2009: CDPH pilot tested and released the LHD electronic survey.
- Ongoing: CDPH is implementing some of the recommendations reached through this collaboration.

Once final recommendations are made and CDPH develops an action plan, in collaboration with all our stakeholders, the spirit of the LAO's recommendation will be recognized.

13. What lessons have you learned from the Placer County pilot? Do you have plans to expand this pilot?

Senate Bill 1846, (Statutes of 1996), added Section 18986.60 of the Welfare and Institutions Code (W&I) to establish the Placer County Integrated Health and Human Services Pilot Program. After approximately three years of preliminary work, the Placer County Consolidated Model Health Contract was approved on July 1, 2002.

Two external evaluations have been conducted on the Placer County Consolidated Model Health Contract: "The Placer County Consolidated Model Health Contract: A State-County Partnership To Improve Public Health Systems" (Foundation Consortium for California's Children and Youth, December 2002) and "First Year Checkup: Strategies for a Stronger Public Health Department" (Little Hoover Commission, January 2009).

#### Findings from the Foundation Consortium Evaluation

- The contract permits greater county flexibility in meeting state and federal requirements and shifts the focus to accountability for meeting the outcome "healthy people in health communities" by "promot(ing) physical and mental health and prevent(ing) disease, injury and disability" among the county residents.
- Once fully implemented, Placer County representatives believe that there will be a significant savings for the county in accounting, reporting, and contracting costs.
- Placer County representatives believe that County Health and Human Services staff will have more flexibility to provide better coordinated, holistic services to children, families and communities.
- Developing the model contract was difficult. It took three years, committed leadership, participation of large teams of program, fiscal, legal, contracting, and data experts from both county and state agencies, and the creation of a new culture of partnership among state and county leaders and administrators.

- Successful implementation of the contract included the following factors:
  - Commitment from the Top
  - Active Involvement of a Large Cadre of State and County Experts
  - Shifting Relationships from Monitoring Compliance to Partnership
  - Re-focusing the Emphasis from Categorical to Outcomes Management
  - Taking on Increased Workload
  - Training and Re-training
- Project leaders estimate that somewhere between 70 and 80 percent of the model contract should be applicable to other counties; county differences are likely to affect ease of replication.
- The following factors are crucial for replication:

#### County Replication Issues

- Readiness
- Leadership Commitment to the Vision
- Sustained Staff Involvement
- Adjusting to a New View of Program Management
- County Infrastructure

#### State Replication Issues

- Sustained Commitment to the Vision and to the Project
- Human Resources
- Supporting Dual Administrative Systems
- Additional State Legislation and Federal Approval

More work is needed to increase administrative flexibility and move toward improving outcomes through comprehensive, integrated service delivery.

#### Findings from the Little Hoover Commission

- Categorical funding typically carries reporting and other administrative requirements that involve significant staff time within the local jurisdiction.
- Streamlining Federal Funds
  - The Centers for Disease Control and Prevention (CDC) has demonstrated that it understands the limits imposed by federal funding streams and is moving forward to improve the process.

In light of these evaluations and recommendations, CDPH awaits the final recommendations from the Contract Simplification Project to guide future efforts.



AB 861 (Ruskin) proposes to add Section 100571 to the Health and Safety Code to implement consolidated contracts for all counties. Although the Department does not have a current position, outcomes from the Contract Simplification Project will provide the basis for a considered process for consolidated contracts.

### **Laboratory Field Services**

Laboratory Field Services (LFS) within DPH is responsible for licensing, registering, and overseeing clinical laboratories that analyze human specimens such as blood, tissue, and urine so that medical professionals can make diagnoses and prescribe treatment. A recent California State Auditor Report highlighted that LFS is not meeting its state-mandated responsibilities of overseeing these facilities, such as not inspecting laboratories every two years as required by state law.

One of the recommendations from the auditor's report was that LFS should work with the department's budget section to ensure that it adjusts its fees in accordance to the Budget Act. From 2003-04 to 2007-08, the department failed to adjust its fee schedule in accordance with the Budget Act, thereby forgoing over \$1 million in additional fee revenue.

Additionally, LFS is responsible for approving clinical laboratory training programs. At a recent Senate Health Committee hearing regarding the state's shortages in the healthcare workforce, it was highlighted that one of the impediments to ensuring an adequate supply of certain allied health care professionals, such as clinical laboratory scientists, was that LFS is slow to approve new clinical training programs/internships.

14. Has the department undertaken any efforts to adjust the LFS fee schedule to recoup any of the forgone fee revenue?

LFS failed to adjust fees in accordance with the Budget Act in two consecutive fiscal years. However, CDPH cannot recoup lost fee revenue for those years because the Budget Act authority to increase fees is specific to each year. CDPH has developed and implemented a process to ensure fees are adjusted in a timely manner following annual enactment of the Budget.

15. Does the department plan to adjust LFS's fee schedule in order to secure enough funding to meet its mandates and to complete its workload in a timely manner? Please explain.

CDPH has sponsored SB 744 (Strickland) legislation to implement a sliding fee schedule for licensed laboratories based on their annual volume of testing. The federal government introduced a similar sliding fee schedule for CLIA laboratories in 1992 that is widely accepted. The bill proposes additional changes to fees and in total would increase revenue to LFS by about \$5 million. CDPH will use this increased revenue to hire qualified inspectors, investigators, licensing, and enforcement staff.



## **Confidential Morbidity Reports/Electronic Laboratory Reporting**

The Confidential Morbidity Reports/Electronic Laboratory Reporting (Web-CMR/ELR) project will provide California with a Web-based system for use by health care providers, laboratories, local health departments, and DPH for the reporting, surveillance, and case management activities of communicable diseases. There are concerns that the scope of this project has not been clearly defined and that the project is at risk of further delay. Web-CMR/ELR started in 2003, was suspended in 2005 because it was determined that the software solution did not satisfy the requirements, and was started up again in May 2008. It has been reported that the electronic laboratory component has been delayed by two years.

16. In an August 2008 presentation by the department's Center for Infectious Diseases, the entire project was expected to be rolled-out in 2010. Is this still the projected timeline? If not, why not?

The project remains on track to roll out in 2010, on time and on budget. CDPH has renamed the application for the Web-CMR/ELR project the California – Reportable Disease Information Exchange (Cal-REDIE) application.

Over the next several months, project and IT staff will verify that the forms, software, and hardware function successfully as an integrated web-based system. Cal-REDIE currently operates within the State's strict security standards and adheres to the State's confidentiality regulations. Training of staff in pilot LHDs in Placer, Santa Cruz, and San Mateo Counties will occur by July 2009. The pilot will occur as scheduled from October 9, 2009 through January 12, 2010. A roll out of the system to additional LHDs will continue throughout 2010.

17. The California Association of Public Health Laboratory Directors recently announced the launch of the California eXchange (Cal-X), which will serve as the infrastructure of an interoperable network of public and private laboratories (essentially serving as an electronic laboratory reporting system). How does this affect the Web-CMR/ELR project? Will there be overlap or duplication of these systems?

Web-CMR is the official CDPH system for reporting and surveillance of notifiable infectious diseases designed to meet all State requirements for maintaining the confidentiality of information reported and security standards, and will comply with all national requirements regarding the transmission and reporting of data as required by the U.S. Centers for Disease Control and Prevention (CDC), including the Public Health Information Network (PHIN) standards. While CDPH is not entirely familiar with Cal-X, it does appear to function as "pass through" for data. Further discussion with CDPH and CAPHLD about Cal-X is not expected to delay Web-CMR/ELR project implementation.

## Workforce and Succession Planning

Within DPH, a number of management staff are, or soon will be, eligible to retire. According to the auditor's report, 65 percent of the department's employees in leadership positions are age 50 or older. To the extent these managers do retire, the department could lose a significant amount of experience and expertise.

18. What percentage of the department's managers do you anticipate will retire over the next two years and the next five years?

Based upon projections from the Bureau of State Audits (Table 4 of California State Audit Report 2008-605), with the same percentage increase per fiscal year and using current employee numbers for each group we anticipate:

- 122 supervisors, managers, and exempt employees will retire during the next two fiscal years; and
- 271 supervisors, managers, and exempt employees will retire within the next five fiscal years.

### Projected Retirements of CDPH Employees

Fiscal Years 2009-10 through 2013-14

<i>Category</i>	<i>Number of Employees</i>	<i>Number to Retire over Next 2 Years</i>	<i>Number to Retire over Next 5 Years*</i>
<i>Supervisors, Managers and Exempt</i>	713	122	271
<i>Rank and File</i>	2879	415	677
<i>All CDPH Employees</i>	3592	537	948

\*Cumulative number

19. What actions have you taken to prepare for this potential staff turnover to minimize the impact on program operations? Specifically, how do you propose to attract and train replacement staff and also retain existing staff, where appropriate?

## Strategic Plan

In July 2008, the department released its first Strategic Plan. Goal 4 of the Strategic Plan is to "Promote Quality of the Workforce and the Workplace Environment."



Using a performance-based strategy at the individual level, CDPH is working to ensure that all employees have an individual development plan, including individual performance objectives, and receive a written annual performance review.

The ten aspects of the goal include:

- Organizational Image/perception of others (peers, clients, community)
- Leadership
- Work conditions
- Treatment of employees
- Rewards and recognition
- Teamwork
- Supervision
- Job satisfaction
- Customer focus
- Overall satisfaction

### ***Initiation of Leadership and Workforce Development Program***

In July 2008, the Department initiated a Leadership and Workforce Development program to develop leadership consistency and a competent workforce capacity to meet the future demand for quality public health services in California.

In October 2008, hired consultant Cambria Solutions to produce: 1) a plan to establish an Office of Leadership and Workforce Development (OWLD); 2) an Annual Performance and Development Plan with tools, training and administration; and, 3) survey tools to assess recruitment effectiveness, retention issues, overall employee morale and satisfaction and workplace improvements that are recommended by employees. These products will help CDPH assess and improve its desirability as an employer and make changes to attract and retain talented public health professionals. The department is currently reviewing deliverables one and two.

### ***New Employee Orientation and New Supervisor Training***

The OWLD has reinstated new employee orientation and is ensuring that all supervisors and managers have received the required 80 hours of basic supervision training. Since January 2009, the OWLD has conducted seven new employee orientations. Approximately 260 staff has completed the class.

### ***LabAspire***

Public health microbiologists are the foundation of state and local laboratories and attracting and keeping more of them in state service has been deemed "workforce challenge No.1" by our Director, Dr. Mark Horton. To mitigate this workforce challenge, the department initiated LabAspire. LabAspire is a partnership between CDPH; University of California (UC), Davis; UC Berkeley; UCLA; county and state public health laboratories; and the California Association of Public Health Laboratory Directors (CAPHLD).



LabAspire's mission is to create a pipeline of qualified candidates for public health laboratory directorships by providing fellowship support for assistant laboratory directors, post-baccalaureate traineeships, and advanced-degree education in microbiology or similar field.

LabAspire sponsored programs are designed to prepare individuals to meet state and federal requirements for public health laboratory positions, to help develop an adequate public health workforce from the entry level positions to Laboratory Directors.

LabAspire-sponsored doctoral programs at UCLA and UC Berkeley require that graduates work one year in public health laboratories for every year that they were funded. LabAspire also sponsors post-doctoral fellowships at the CDPH Microbial Disease Laboratory and at the UCLA School of Medicine, as well as three Assistant Laboratory Director Positions in Los Angeles, San Francisco, and Sonoma Counties, making individuals eligible for board certification. LabAspire recruitment and evaluation efforts are conducted by the UC Davis.

### ***Partnership with University of California, Davis***

The department has formed a partnership with UC Davis to develop and support a masters in public health (MPH) degree program. Through the partnership CDPH provides:

- curriculum guidance
- content expertise
- faculty
- guest faculty/speakers for public health courses
- co-teachers for the masters in public health seminar.

In addition, CDPH staff serve on planning committees for School of Public Health and planning and governance committees for the Masters in Public Health program.

### ***Public Health Leadership Institute***

The department is participating in the first California/Hawaii Public Health Leadership Institute (Institute). The Institute, which began in January 2009, is a yearlong program for 30 senior public health staff from California and 10 from Hawaii.

### ***Human Resources Modernization***

CDPH is active in HR Modernization efforts by 1) participating in developing a Leadership Competency Model for supervisors and managers, 2) participating in the class consolidation and competency model for state scientists, and 3) participating in the State Personnel Board's Three-Rank Eligible Pilot Study. In the pilot, all applicants who meet the minimum qualifications for a classification and pass the examination or qualifications assessment will be placed in three ranks and be immediately reachable for appointment. The pilot study began September 2008, and will conclude June 2010.

### ***Collaboration with Pacific Public Health Training Center***

On March 25, 2009, the department co-sponsored the Public Health Workforce Convening 2009 with the Pacific Public Health Training Center. The convening brought key public and private players together to begin developing strategies and actions to ensure that California's future public health workforce needs will be met.

Convening workgroups addressed the following issues:

- Centralized Recruitment Site
- Marketing Strategies for public health
- An Alliance for Public Health Workforce Development (outgrowth of Strengthening Public Health Workforce Planning and Coordination discussion group)
- Data gaps
- Continuing Education and Training

### ***Hiring of Chief of Office of Leadership and Workforce Development***

Effective April 1, 2009, Kathleen Velazquez, MPH, MA became CDPH's first Chief of the Office of Leadership and Workforce Development. Ms. Velazquez has a bachelor's degree in health science and a master's degree in public health. She has worked in maternal and child health, rural health, mental health, and genetic disease screening. For the last 16 years, Ms. Velazquez served as Chief of the state's Newborn Screening Program.

The department will complete its first workforce and succession plans no later than summer 2009.

20. Do you play a role in helping to develop jobs in the public health sector? What role, if any, does DPH play in getting children in K-12 education interested in science and public health?

Yes, I play a significant role to develop jobs in the public health sector. Over the last year, we have taken significant steps in leadership and workforce development. Please refer to the answer to the question above. CDPH is not currently engaged in activities to address K-12 education.

## Invoice Tracking System & Prioritize Unpaid Invoices

### CDPH Strategic Plan, 2008-2010

#### Goal: 5 – Improve Effectiveness of Business Functions

**Objective: 3 & 4** - Increase to 85% the percentage of invoices processed by Accounting within 30 days of receipt in Accounting by 06/30/09.

**Data Resource(s) to Track Progress toward Objective:** Accounting Invoice Tracking System

**Strategy:** Re-engineer processes in accounting and implement tracking system & prioritize old invoices

**Action Plan Description:** Create and implement a tracking system for unpaid invoices by August 1, 2008 and publish various management reports by October 1, 2008 using 644 hours staff time.

Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
1	Hire temporary staff (students & retired annuitants). Staff will pay invoices & 3 will be dedicated to the Invoice Tracking System.	Jean Billington Annette Dobie Lillie Hughes	4/14/08	7/24/08	Ongoing (hours not part of project)	Done
2	Order additional computer equipment and software for temp help.	Sal Rodriguez	4/21/08	5/2/08	4 hrs	May 2, 2008
3	Create screening checklists (preliminary, accounting specialist, and supervisor).	Jean Billington Annette Dobie Lillie Hughes Thuy Voqui	4/28/08	5/21/08	32 hrs	May 21, 2008
4	Identify most common reasons for rejection of payment package (preliminary, accounting specialist and supervisor)	Jean Billington Annette Dobie Lillie Hughes Thuy Voqui	4/28/08	5/9/08	6 hrs	May 9, 2008



Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
5	Schedule rooms for training Programs. (8 sessions in Sacramento and 2 in Richmond)	Irene Arias	4/30/08	5/9/08	4 hr.	May 6, 2008
6	Determine unique identifier and how to notate on source documents. Determine if items returned will have the same identifier or be considered a new entry when returned to Accounting. (Confer with Payson Hall)	Norma Tucker Jean Billington Annette Dobie Lillie Hughes Thuy Voqui	5/1/08	5/14/08	8 hrs	May 14, 2008
7	Determine how to handle invoices that are claim cut at SCO	Jean Billington Annette Dobie Lillie Hughes Thuy Voqui	5/1/08	5/21/08	6 hrs	May 21, 2008
8	Draft announcement to Program of the new Accounting process including the screening checklist and that payment packages not meeting specification will be returned.	Norma Tucker	5/9/08	5/21/08	6 hrs.	June 6, 2008
9	Determine and list data elements needed for tracking system.	Jean Billington Annette Dobie Lillie Hughes Thuy Voqui Norma Tucker	5/19/08	5/22/08	25 hrs	June 2, 2008
10	Supervisor Review of screening checklists.	Norma Tucker	5/22/08	5/22/08	1 hr	May 29, 2008
11	Review of draft announcement.	Jean Billington	5/22/08	5/22/08	1 hr	June 6, 2008
12	Review and revise work flow process which will include the prioritizing of invoices.	Jean Billington Annette Dobie Lillie Hughes	5/22/08	5/30/08	12 hrs	May 29, 2008

Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
13	Brief Sponsor on screening checklist.	Norma Tucker Jean Billington	5/23/08	5/23/08	2 hr	May, 29, 2008
14	Revise announcement based on comments from review.	Norma Tucker	5/23/08	5/23/08	1 hr	June 9, 2008
15	Create three page checklist/memo for returning incomplete invoice packages back to Programs (preliminary, accountant, supervisor).	Maria Celerio	5/27/08	5/28/08	6 hrs	May 28, 2008
16	Sponsor review of announcement.	Steve Kessler	5/27/08	5/27/08	1 hr	June 9, 2008
17	Design electronic tracking system.	Sal Rodriguez	5/27/08	6/30/08	80 hrs	June 30, 2008
18	Revise announcement based on comments from sponsor review.	Norma Tucker	5/28/08	5/28/08	1 hr	June 9, 2008
19	Brief Sponsor on new work flow process.	Jean Billington Norma Tucker	6/2/08	6/21/08	2 hrs	Done
20	Develop and prepare training materials for Programs.	Jean Billington Lillie Hughes Annette Dobie Maria Celerio	6/2/08	6/20/08	90 hrs	Done
21	Brief Executive Staff on checklist and rejection process.	Norma Tucker	6/10/08	6/10/08	1 hr	Done
22	Send announcement to Programs of new screening process and announce training schedule.	Norma Tucker	6/12/08	6/12/08	1 hr	Done
23	Make copies of training hand out	Irene Arias	6/23/08	6/24/08	4 hrs	Done
24	Create written procedures for Accounting staff (invoice tracking and workflow).	Annette Dobie Lillie Hughes	6/23/08	7/18/08	36 hrs	In process

Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
25	Train Program Staff	Jean Billington Annette Dobie Lillie Hughes	6/24/08	7/25/08	96 hrs	In process – last one is July 24, 2008
26	Develop a user manual for the invoice tracking system.	Sal Rodriguez	7/1/08	7/18/08	8 hrs	July 18, 2008
27	Review and test tracking system and adjust as needed	Jean Billington Annette Dobie Lillie Hughes Sal Rodriguez	7/1/08	7/3/08	10 hrs	Done
28	Determine which data elements to include on published invoice tracking log.	Jean Billington	7/7/08	7/10/08	1 hr	Done
29	Supervisor review written procedures.	Jean Billington	7/21/08	7/21/08	2 hrs	Done
30	Revised written procedures based on supervisor review.	Annette Dobie Lillie Hughes	7/23/08	7/22/08	3 hrs	Done
31	Supervisory 2 <sup>nd</sup> review of written procedures.	Jean Billington	7/23/08	7/23/08	2 hrs	Done
32	Train temporary and Accounting staff.	Annette Dobie Lillie Hughes	7/24/08	8/8/08	80 hrs	Done – Could not complete because of Executive Order
33	Implement screening process	All staff	8/1/08	8/1/08	0 hrs	11/1/2008-12/1/08
34	Implement logging of invoices	Irene Arias 3 new temporary staff	8/1/08	8/1/08	0 hrs	11/1/08-12/1/08
35	Implement pilot process of new work flow procedures.	Irene Arias 3 new temporary staff	8/1/08	8/1/08	0 hrs	11/1/08-12/1/08



Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
36	Analyze process and adjust as necessary.	Jean Billington Annette Dobie Lillie Hughes	8/1/08	8/15/08	40 hrs	12/1/08-12/31/08
37	Identify various management reports (meet with Jose Ortiz & Steve Kessler to identify what reports they want and who should view the various reports)	Norma Tucker Jean Billington	8/1/08	8/25/08	2 hrs	1/22/09
38	Set up connectivity to publish tracking log and management reports.	Sal Rodriguez	8/1/08	8/8/08	2 hr	1/26/09
39	Design tracking log report.	Sal Rodriguez	8/1/08	8/8/08	4 hr	12/1/08
40	Implement new workflow process for all.	Irene Arias 3 new temporary staff	8/11/08	8/11/08	0 hr	12/1/08
41	Publish tracking log report on Intranet.	Sal Rodriguez	8/15/08	8/15/08	1 hr	1/28/09
42	Create specifications for the various management reports.	Norma Tucker Jean Billington	8/26/08	8/29/08	10 hrs	1/12/09
43	Request feedback from Programs on tracking system	Norma Tucker	8/26/08	8/26/08	2 hr	December 24, 2008
44	Design various management reports from information in tracking log (estimated 10 various reports).	Sal Rodriguez	9/1/08	9/26/08	40 hrs	In process
45	Review input from Programs and incorporate any changes that are deemed valuable.	Norma Tucker Jean Billington	9/22/08	9/30/08	4 hrs	January 15, 2009
46	Run and test various management reports.	Jean Billington Norma Tucker	9/29/08	9/30/08	4 hrs	

Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
47	Publish management reports	Sal Rodriguez Norma Tucker	10/1/08	10/1/08	1 hr	
<b>TOTAL</b>					107 person days	

## CDPH Strategic Plan, 2008-2010

### Goal: 5. Improve effectiveness of Business Functions

**Objective: 9.** Distribute Expenditure Forecast Report to program by December 1, 2008 and monthly thereafter until end of the fiscal year.

### Data Resource(s) to Track Progress toward Objective: Weekly meetings

**Strategy:** Develop a Work Plan and monitor the work plan to achieve this objective

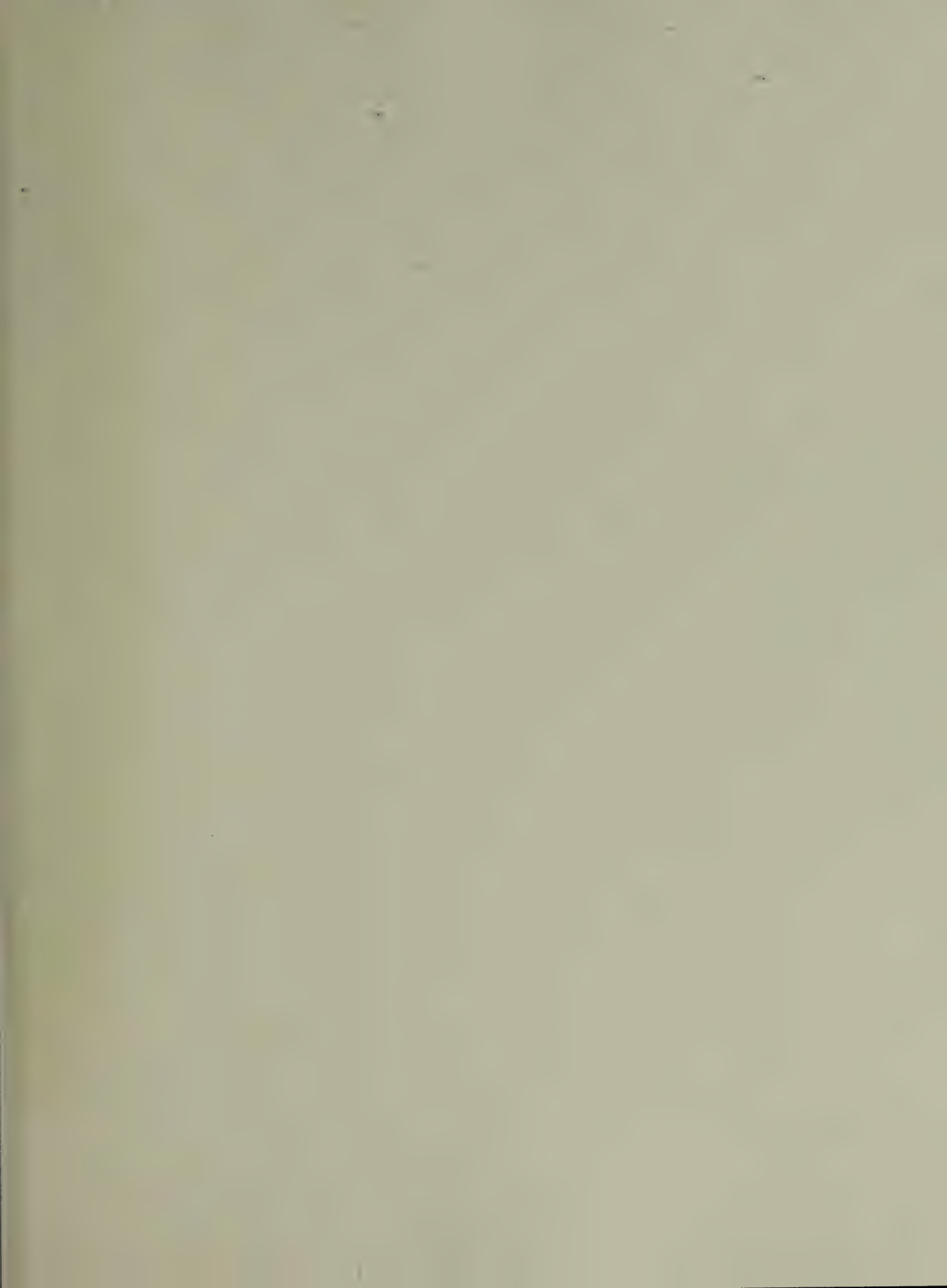
Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
1	Prepare a survey form to EFR users concerning problems they encountered during 2007 FY ERF drills and what they would like to see in future training classes.	Amy Kuo	June 16, 2008	June 16, 2008	4 hours	June 16, 2008
2	Review survey e-mail to EFR users.	Jerome Tribble	June 17, 2008	June 17, 2008	1 hour	June 17, 2008
3	E-mail survey to EFR users.	Amy Kuo	June 17, 2008	June 23, 2008	1 hour	June 23, 2008
4	Develop Work Plan for EFR Process.	Amy Kuo	June 16, 2008	June 30, 2008	6 hours	June 30, 2008
5	Set up weekly meetings to monitor EFR work plan milestones.	Amy Kuo	July 1, 2008	December 1, 2008	1 hour	Ongoing
6	Review current training materials and develop a new training packet for EFR/CORE.	Amy Kuo Jerome Tribble Merrienne McDonald Norma Tucker	July 1, 2008	September 30, 2008	176 hours	September 18, 2008



Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
7	Update ERF Contact Change Form to add column for Primary user for Sub Unit	Amy Kuo	June 16, 2008	October 1, 2008	4 hours	September 18, 2008
8	Send e-mail to current EFR users to update our contact list with ERF Contact Change Form	Amy Kuo	October 1, 2008	October 1, 2008	1 hours	September 18, 2008
9	Publish ERF training Material on Intranet	Sal Rodriguez	October 1, 2008	October 1, 2008	4 hours	December 18, 2008
10	Reserve Rooms for EFR training	Amy Kuo	October 1, 2008	October 1, 2008	1 Hour	August 2008
11	Send EFR Training notices	Amy Kuo	October 15, 2008	October 15, 2008	2 hours	October 1, 2008
12	Schedule users for training	Amy Kuo	October 15, 2008	October 20, 2008	4 hours	October 1 - 14, 2008
13	EFR Training (1 session @ Richmond & 8 sessions in Sacramento)	Amy Kuo Jerome Tribble	October 21, 2008	October 30, 2008	64 hours	October 15 - 24, 2008
14	October month end close.	Systems Staff	November 3, 2008	November 13, 2008	72 hours	November 17, 2008
15	Begin EFR process for October 2008 – email Acctg Chief to verify EFR formulas	Amy Kuo Norma Tucker	November 11, 2008	November 11, 2008	2 hours	November 12, 2008
16	Modify Lag Month per Acctg Chief	Amy Kuo	November 12, 2008	November 12, 2008	2 hours	November 17, 2008
17	Establish next fiscal month, Map objects from Exception Report, search for any unassigned Org Unit, Freeze mapping and values, email Acctg Chief for EFR dates and OK to start EFR process.	Amy Kuo	November 13, 2008	November 13, 2008	6 hours	November 17, 2008
18	Send our EFR notification for drill	Amy Kuo	November 14, 2008	November 14, 2008	2 hours	November 17, 2008

Activity Number	What is Activity	Who is Required	Start Date	End Date	Staff Time Required	Date Completed
19	Programs input into EFR	CDPH programs	November 14, 2008	November 21, 2008		November 17 – 25, 2008
20	Close EFR Drill, set completion flags, email Acctg Chief for review and adjustments, make lag month adjustment, make ICR adj for Prog 40 Fund G and Prog 96 fund D	Amy Kuo Norma Tucker	November 24, 2008	November 25, 2008	8 hours	November 26, 2008
21	Email EFR users the Drill is Complete	Amy Kuo	November 25, 2008	November 25, 2008	1 hour	December 1, 2008
22	Prepare General Fund Summary, Overspent Special Fund and General Fund Support Projection Report	Norma Tucker	November 25, 2008	November 26, 2008	8 hours	November 26 – December 1, 2008
23	Meet with Budgets, FMB Chief and Admin. Deputy Director to discuss the General Fund Summary and over spent special funds.	Norma Tucker	December 1, 2008	December 1, 2008	8 hours	December 1 – 5, 2008
24	Make any revisions to reports as identified in item 23 above.	Norma Tucker	December 2, 2008	December 2, 2008	2 hours	December 2 – 3, 2008
25	Make copies of handouts for Executive Staff briefing	Norma Tucker	December 3, 2008	December 8, 2008	1 hour	December 8, 2008
26	Brief Executive Staff on EFR	Norma Tucker	December 9, 2008	December 9, 2008	1 hour	December 9, 2008
<b>TOTAL</b>						

382 hours





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MEMBERS PRESENT

4 SENATOR DARRELL STEINBERG, Chair  
5 SENATOR SAMUEL AANESTAD  
6 SENATOR ROBERT DUTTON

STAFF PRESENT

11 GREG SCHMIDT, Executive Officer  
12 JANE LEONARD BROWN, Committee Assistant  
13 NETTIE SABELHAUS, Appointments Consultant  
14 JULIE NYSTROM, Assistant to SENATOR AANESTAD  
15 CHRIS BURNS, Assistant to SENATOR DUTTON

ALSO PRESENT

20 DAVID G. MAXWELL-JOLLY, Ph.D., Director, Health  
Care Services Department  
21 TOBY J. DOUGLAS, Chief Deputy Director, Health  
Care Services Department  
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## PROCEEDINGS

CHAIRMAN STEINBERG: Good afternoon, everybody.

Welcome to the Senate Rules Committee for May the 20th  
of 2009.

We do have two members who are out today and  
one member who is across the hall conducting business,  
you know, presenting bills, and since cloning is  
currently illegal in California, without objection, we  
will begin as a subcommittee.

Is that all right, Sam?

SENATOR AANESTAD: That sounds good.

CHAIRMAN STEINBERG: Okay. We'll skip item  
one, which is the reference of bills, and we will invite  
the first two of three gubernatorial appointees  
appearing today, David Maxwell-Jolly, the director of  
the Health Care Services Department, and Toby J. Douglas  
is the chief deputy director of the Health Care Services  
Department.

Now we have a quorum. Senator Dutton will help  
us establish a quorum here.

Please call the roll.

MS. BROWN: Senator Cedillo.

Dutton.

SENATOR DUTTON: Here.

MS. BROWN: Dutton here.

1

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Oropeza.

Aanestad.

SENATOR AANESTAD: Here.

MS. BROWN: Aanestad here.

Steinberg.

CHAIRMAN STEINBERG: Here.

MS. BROWN: Steinberg here.

CHAIRMAN STEINBERG: Gentlemen, welcome. We  
have a tradition in the Rules Committee that we want to  
invite the nominees for these important offices to have  
a chance to introduce their families, friends, any other  
special guests that are in the audience. So please take  
advantage of that.

MR. MAXWELL-JOLLY: Thank you, Mr. Chairman. I  
would like to introduce my wife, Julie.

CHAIRMAN STEINBERG: Welcome to you.

MR. DOUGLAS: Thank you, Mr. Chairman. Toby  
Douglas. I would like to introduce my wife, Gretchen.

CHAIRMAN STEINBERG: Welcome.

MR. DOUGLAS: My three children, Ethan, Lily,  
and Zachary, and then my father and my mother, Adrian  
and Esme Douglas.

CHAIRMAN STEINBERG: Look at that. I must tell  
you, seeing kids here today is the bright spot. Let me  
tell you, it is the bright spot.

2



1 MS. SABELHAUS: Everyone should bring their  
2 children.  
3 CHAIRMAN STEINBERG: Absolutely. The day after  
4 an election. Absolutely.

5 So I want to, I guess, begin, first of all, by  
6 thanking you for your public service. By reputation and  
7 by your own record, you are dedicated people who appear  
8 to be in it for the long haul here as we go through all  
9 of the challenges and difficulties with the state's  
10 fiscal situation and other challenges.

11 So I suppose, you know, I want to give you the  
12 opportunity to make your brief opening statements, but  
13 of course what we really wonder here is what your  
14 priorities are and whether you have any road maps that  
15 can guide us through these difficult times, with the  
16 paramount goal being we are going to have to cut. How  
17 do we minimize the damage to the people who most need  
18 the help?

19 MR. MAXWELL-JOLLY: Thank you, Mr. Chairman.  
20 If I could proceed.

21 CHAIRMAN STEINBERG: Yes.

22 MR. MAXWELL-JOLLY: It's an honor to be here  
23 before you today for confirmation for the position of  
24 director of the Department of Health Care Services.

25 CHAIRMAN STEINBERG: Slow for the court

3

1 healthy and vital in itself to be able to meet these  
2 challenges. I'll work to make the department a place  
3 where people want to work, where they feel they can  
4 thrive and will be in for the long haul too.

5 We need to develop close working relationships  
6 with our sister departments, which is essential, because  
7 they are our partners in delivering vital services that  
8 we help to finance, and also with the counties who have  
9 an important role to play both in delivering services  
10 and determining eligibility. I think I have a  
11 particularly unique set of experiences that will help to  
12 make -- that I can contribute a lot to make that working  
13 relationship more effective.

14 As you know, health reform is on the national  
15 agenda again, and I'm going to be working hard with the  
16 administration to make sure that the experience that we  
17 have in California working on our own health reform  
18 proposal informs what's going on in Washington, but also  
19 to make sure that Washington knows what California's  
20 needs are so the national solution will fit here as  
21 well.

22 I take very seriously the fiscal  
23 responsibilities that I have in stewarding the large  
24 budget we're responsible for, and that means making sure  
25 we protect the integrity of the Medi-Cal program. So I

5

1 reporter.

2 MR. MAXWELL-JOLLY: I want to express my  
3 gratitude to the governor and to Secretary Belshay for  
4 placing their confidence in me to undertake the  
5 responsibilities of this position.

6 I'm particularly proud of the undaunted  
7 leadership that the governor showed in his energetic  
8 pursuit of real healthcare reform for the last few  
9 years. I was privileged to actually participate in the  
10 efforts to get everything off the ground, and I was able  
11 to see up close how much determination was necessary to  
12 make progress. These are extremely challenging times,  
13 but they are the times when the services that Health  
14 Care Services provides are most important to people.

15 As you know, I've been working in state  
16 government for nearly 27 years. I've had great  
17 opportunities to work with wonderful people. I've had  
18 wonderful mentors over the years, and I've served the  
19 state as best I can. I look forward to putting my  
20 knowledge and experience together to advance the work of  
21 the Department of Health Care Services.

22 As director, I intend to help the department  
23 realize its vision of improving the health of all  
24 Californians. In the first place, that means that we  
25 need to have an institution, the department, that is

4

1 want to be an active advocate to root out -- to protect  
2 and root out fraud in the program, and I intend to do  
3 that vigorously.

4 Finally, I'm committed to help the secretary in  
5 her efforts to advance the vision that individuals can  
6 be served in the least restrictive environment. The  
7 Medi-Cal program has a key role to play in advancing  
8 that vision, and I believe that we'll do all our part to  
9 help there.

10 I'm grateful to be here before you this  
11 morning -- this afternoon, and I promise to continue to  
12 give the Senate and the people of California my best.

13 CHAIRMAN STEINBERG: Thank you. Thank you very  
14 much.

15 Mr. Douglas.

16 MR. DOUGLAS: Good afternoon, Senator Steinberg  
17 and Members of the Committee. Thank you for considering  
18 my appointment to the position of chief deputy director  
19 of Health Care Services. It's an honor to come before  
20 you at this hearing.

21 Over the last decade, I've been committed to  
22 public service where I have managed and implemented  
23 critical policy for various local and statewide  
24 healthcare delivery systems, including the Medi-Cal  
25 program. My various positions have allowed me to become

6

1 a leader in healthcare policy and healthcare delivery  
2 and well-prepared for the position of chief deputy  
3 director of Health Care Services.

4 In this position, I have the responsibility for  
5 a budget of over \$40 billion dollars, a staff of over  
6 1700 positions, as well as responsibility for all the  
7 healthcare programs in the department, including the  
8 role of the state Medicaid director.

9 The department arranges for and pays for  
0 services for benefits through a number of programs in  
1 the department, most notably the California Children's  
2 Services program, as well as the Medi-Cal program.  
3 Managing these programs is an enormous responsibility,  
4 but it's a responsibility for which I'm well qualified  
5 for. It requires a leader who has public integrity, a  
6 leader who can ensure the funds are properly spent, and  
7 a leader who will ensure that we manage and control  
8 fraud, waste, and abuse in our program.

9 I also believe in this role that I can be a  
0 leader that allows the department to continue to be a  
1 major force in preserving and improving the health  
2 outcomes of Californians. Some of my goals in this  
3 position are to enhance the delivery and quality of  
4 healthcare services for Medi-Cal beneficiaries. I must  
5 work to develop the systems of care that directly

7

1 address the high cost and chronic conditions of certain  
2 beneficiaries within our Medi-Cal program that consume  
3 the majority of the expenditures.

4 I will ensure fiscal integrity by reducing  
5 fraud, waste, and abuse within our healthcare program.  
6 Even with our really strong focus on preserving taxpayer  
7 dollars, as well as our tough prevention efforts, we  
8 continue to encounter fraud, waste, and abuse in our  
9 program, and I will lead efforts to prevent and  
0 eliminate this inappropriate use of public funds.

1 I want to minimize unnecessary administrative  
2 barriers by implementing provider-friendly business  
3 processes related to claims processing, treatment  
4 authorization requests, as well as our provider  
5 enrollment. I will lead efforts to facilitate the  
6 enrollment of eligible individuals in the healthcare  
7 program. I'll preserve and improve safety net care  
8 services by maximizing federal funding. I will ensure  
9 the department is a leader in advancing healthcare  
0 innovation in areas such as system and payment reforms,  
1 as well as health information technology; and I will  
2 advance the programs and efforts for Medi-Cal to ensure  
3 that our beneficiaries can receive long-term care  
4 services in their home and community rather than in  
5 institutional settings. I'm committed to continuing to

8

1 strengthen the department's operations by ensuring we  
2 have a strong, dedicated workforce.

3 Finally, I'm honored that I have the  
4 opportunity to be before you today and to be considered  
5 for a position as important as chief deputy director of  
6 Health Care programs. I'm committed to public service  
7 and its role in ensuring that government is effective in  
8 improving the lives of Californians, and I'm very  
9 excited to work with David Maxwell-Jolly in fulfilling  
10 the department's mission.

11 I finally want to thank Secretary Belshay and  
12 Governor Schwarzenegger for appointing me to this  
13 position and for giving me this wonderful opportunity.  
14 I'm happy to answer any questions that you might have.

15 CHAIRMAN STEINBERG: Thank you both very much.  
16 I know I have a series of questions.

17 SENATOR AANESTAD: Couple.

18 CHAIRMAN STEINBERG: Couple.

19 I want to begin with the whole issue of federal  
20 economic stimulus. The governor was back in Washington  
21 D.C. this week making the argument that the federal  
22 government should issue some waivers to not require  
23 strict maintenance of effort, essentially to allow us to  
24 cut Medi-Cal deeper.

25 In your view -- In your view, setting that

9

1 aside for a moment, that may or may not be necessary,  
2 are there more opportunities that you see to be  
3 aggressive and creative to draw down more federal money  
4 in the healthcare field?

5 MR. MAXWELL-JOLLY: If I could, we did propose  
6 substantial reductions in spending based upon federal  
7 flexibility, federal programs.

8 In terms of opportunities for drawing down  
9 additional funding wherever we can, we are seriously  
10 concerned by our ability to do that, because we have to  
11 come up with legitimate matches for those funds.

12 There are a couple of opportunities around. In  
13 the past, we have been successful in using the waiver  
14 process for expanding our federal funding in support for  
15 home- and community-based services for the  
16 developmentally disabled, and that has been an area  
17 where we've been able to use federal money to cover some  
18 of the costs that we had been spending for all of -- as  
19 a fully general fund expenditure. We're going to be  
20 looking at opportunities there as a possibility.

21 We also believe that there are some un -- there  
22 are some expenditures for healthcare services in the  
23 state that are either -- that are expended at the local  
24 level, that are what we call certified public  
25 expenditures, which would be available for match to draw

10



1 down additional federal funding to help get us through  
2 these times. So I think there are some opportunities  
3 for increasing federal funding even under the current  
4 rules.

5 We would also be interested in trying to find  
6 out ways to relax the ground rules to allow federal  
7 match for some other activities that we're doing that  
8 might permit additional funds.

9 CHAIRMAN STEINBERG: I'm going to ask or we'll  
10 have our staff facilitate here that what you just  
11 described is discussed in more detail before the  
12 budget conference committee that will begin its work  
13 tomorrow. Okay.

14 Secondly, on the issue of fraud, what is the  
15 Medi-Cal budget.

16 MR. DOUGLAS: The overall Medi-Cal budget is  
17 \$40 billion dollars.

18 CHAIRMAN STEINBERG: How much of that is state  
19 general funds?

20 MR. DOUGLAS: About \$15 billion dollars.

21 CHAIRMAN STEINBERG: About \$15 billion. The  
22 remainder is --

23 MR. DOUGLAS: Federal funds.

24 CHAIRMAN STEINBERG: -- federal funds.

25 Fifteen billion dollars.

11

1 MR. MAXWELL-JOLLY: And there's additional  
2 nonfederal money in other departments. So the overall  
3 spending on Medi-Cal would also include, for example,  
4 the mental health funding that is spent locally and  
5 matched with federal funds, and that is not in that  
6 \$40 billion dollars.

7 CHAIRMAN STEINBERG: Okay. Let's take the  
8 \$15 billion dollar number.

9 Hey, that's okay. It's not time for the  
10 witnesses to testify.

11 (Laughter.)

12 CHAIRMAN STEINBERG: The -- Let me get my train  
13 of thought here.

14 MR. DOUGLAS: Sorry.

15 CHAIRMAN STEINBERG: That's okay.

16 Of the \$15 billion dollars, if you take that as  
17 the number, from your years of experience in this field,  
18 what amount of that \$15 billion is spent as part of  
19 waste, fraud, and abuse?

20 MR. DOUGLAS: Sure. What we do as a  
21 department -- We've undertaken since 2005 what we call a  
22 Medi-Cal payment error study where we do a comprehensive  
23 review to continue to ensure we're detecting where  
24 there's errors, where there's fraud within our program.

25 In the most recent report just released in

12

1 2007, which -- found that 6.5 percent of the payments  
2 that we make are in error. Now, of that 6.5 percent,  
3 these errors can be related to medical necessity or  
4 related to insufficient documentation. There is a  
5 component, which is about 2-1/2 percent of the total,  
6 which comprises about \$400 million dollars, which is  
7 related to potential fraud. When you drill that down,  
8 the 6-1/2 percent, we've looked at where these errors,  
9 the insufficient documentation, the lack of medical  
10 necessity, lies in there. And the primary drive is  
11 related to -- one is adult day health centers. Another  
12 relates to our physicians. And what we have seen is  
13 there are physicians that are not providing sufficient  
14 documentation that leads to inappropriate prescribing  
15 patterns and prescriptions that shouldn't have been  
16 dispensed.

17 So what we did in this budget, as part of the  
18 May revision, is we looked for other ways to reduce our  
19 expenditures, putting even more focus on -- as fraud  
20 evolves, to put more focus on the areas where we are  
21 seeing error, and that is in adult day health centers.  
22 That is related to physicians and relates as well to our  
23 pharmacy issues, and we will be putting more focus on  
24 that.

25 CHAIRMAN STEINBERG: Good, thorough answer, but

13

1 let's go back.

2 Six and a half percent of what?

3 MR. DOUGLAS: Six and a half percent of all  
4 our payments in our fee-for-service system. So I should  
5 make it clear this is not dealing -- we make a lot of  
6 payments, as David Maxwell-Jolly mentioned, in our  
7 managed care program, within our mental health  
8 program --

9 CHAIRMAN STEINBERG: That's not what we're  
10 talking about. Six and a half percent of what number?

11 MR. MAXWELL-JOLLY: About 15 billion.

12 CHAIRMAN STEINBERG: Of about 15 billion.

13 MR. DOUGLAS: Yeah.

14 CHAIRMAN STEINBERG: So -- I'm doing a little  
15 math here. Don't tell me.

16 It's -- You are talking about \$900 million  
17 dollars.

18 MR. DOUGLAS: Approximately, yes.

19 CHAIRMAN STEINBERG: Nine hundred million  
20 dollars. Okay.

21 So as we begin this very difficult process over  
22 the next number of weeks, what can we do to capture that  
23 \$900 million dollars?

24 MR. MAXWELL-JOLLY: Well, we've got some  
25 proposals on the table as part of the budget that came

14



1 out last week.

2 One of the big areas where errors occur a lot  
3 is in the documentation of medical necessity for people  
4 who are using the adult day health centers' services.  
5 We noticed this high frequency of lack of adequate  
6 documentation of medical necessity in the last couple  
7 studies, and we actually did some trial reviews of  
8 facilities -- targeted reviews of those facilities, and  
9 we found that if we went into those facilities and made  
0 sure that they were determining medical necessity  
1 correctly, that we would -- we actually saw a  
2 substantial reduction in the amount of claiming from  
3 those facilities.

4 So we believe that we can actually decrease  
5 expenditures for adult day healthcare and better target  
6 them to the people who really need them.

7 CHAIRMAN STEINBERG: That's right on, but again  
8 I just want to make -- You know, we're living in our  
9 world here.

10 What is the governor's proposed Medi-Cal cut in  
11 his May revise?

12 MR. MAXWELL-JOLLY: The overall proposed  
13 Medi-Cal cut is approximately a billion. It totals to  
14 about a billion dollars.

15 CHAIRMAN STEINBERG: A billion dollars. So the

15

1 average person would then ask the question that I'm  
2 going to follow up and ask, which is: Why -- Instead of  
3 cutting the service by a billion dollars, why can't we  
4 achieve 900 million of the billion dollars by more  
5 aggressively addressing the waste or the fraud that you  
6 just described?

7 MR. MAXWELL-JOLLY: Well, first of all, you  
8 have to understand the dichotomy that Toby laid out  
9 between the total number of 6 percent of erroneous  
10 claims and that subset that we think are potentially  
11 fraudulent.

12 A bunch of erroneous claims, if you dig down  
13 and find out the real truth behind it, which is what we  
14 do in the studies, it doesn't mean that claims shouldn't  
15 have been paid. It means that the documentation at some  
16 point along the way wasn't right.

17 CHAIRMAN STEINBERG: So 6-1/2 percent isn't the  
18 right number.

19 MR. MAXWELL-JOLLY: Not the right number.

20 CHAIRMAN STEINBERG: What is it?

21 MR. MAXWELL-JOLLY: I think the right number is  
22 more like 400 million, and that's the ones that are  
23 potentially -- what we call potentially fraudulent,  
24 where we see that there is a real mismatch between, say,  
25 what we were told when we approved the expenditure and

16

1 what the underlying --

2 CHAIRMAN STEINBERG: You know what? I would be  
3 thrilled to save 40 percent of the service here and cut  
4 600 million, if that's necessary, and account for the  
5 other \$400 million dollars by rooting out the fraud. So  
6 what do we need to do that?

7 MR. MAXWELL-JOLLY: Well, I think first of all  
8 you've got to approve our budget proposal. I think that  
9 will give us a good first step.

10 We're going to also be aggressively  
11 targeting --

12 We do a lot of data mining all the time where  
13 we try to find out where people are -- people's claiming  
14 patterns are out of the norm, where we see that there's  
15 suddenly a large increase in claiming for a particular  
16 kind of service that just doesn't make sense.

17 We are going to be aggressively looking at  
18 those things and getting people out on the street to be  
19 able to detect -- identify the situations and take  
20 action quickly. There are a couple areas of concern we  
21 have for providers where we --

22 Medical transportation and providers of  
23 incontinence supplies have been areas where we thought  
24 we need some special attention. We've been doing  
25 in-the-field visits to those providers, and I think

17

1 there's the opportunity not only to weed out people who  
2 are doing things fraudulently, but to make sure the  
3 claims are done right.

4 CHAIRMAN STEINBERG: I won't press it anymore.  
5 This may be a question to pick up with Mr. Wilkening,  
6 who may have the agency answer in terms of how we score  
7 these kinds of savings in the budget. That's what I'm  
8 interested in. Okay?

9 You got 400 million potential savings. You  
10 want us to approve your budget proposal. It saves us  
11 400 million. I know it's more complicated than that.

12 MR. MAXWELL-JOLLY: I wouldn't promise to give  
13 you 400 million in savings from this. I think our total  
14 overall estimates for the actions we have planned is  
15 more modest than that, but I can tell you we're going to  
16 be doing all we can.

17 CHAIRMAN STEINBERG: We may need to give you  
18 more in order to save the 400.

19 Anyhoo, okay. Outcomes and benchmarks,  
20 performance-based budget. Is the department moving in  
21 that direction in terms of showing the public that the  
22 dollar we're investing in Medi-Cal is leading, for  
23 example, to better health outcomes?

24 MR. MAXWELL-JOLLY: Well, I don't have to  
25 convince you about the administration's commitment to

18

1 try and push the quality in healthcare, major part of  
2 our health reform proposal. I think it's something  
3 we're very concerned about.  
4 We are working in a couple of areas to try to  
5 make adjustments in our rate systems that will reflect  
6 the quality measures that we have available for those  
7 particular delivery systems. One area is nursing homes.  
8 We had an extensive engagement with nursing homes,  
9 trying to talk about ways that we can incorporate  
10 quality incentives into payment systems. There was not  
11 a consensus in those groups, but I think we are not  
12 discouraged from moving forward and putting on the table  
13 concrete ways to make adjustments in payments to  
14 reflect quality measures.

15 CMS recently came out with a nursing home  
16 quality assessment tool that uses a starred system. We  
17 think that it has its defects, but it also has its  
18 virtues. And I think that it's a good foundation to  
19 start, and we'll be working with them to improve that.  
20 And I hope we can use that as a basis for making  
21 adjustments.

22 Now, some of those -- Traditionally, we relied  
23 on structural measures of quality in nursing homes, and  
24 I think that CMS is trying to push the envelope to get  
25 more outcome-based measures.

19

1 Another area is in managed care. There's been  
2 quite an effort over the last ten years to put together  
3 comprehensive measures of managed care quality, and  
4 we're looking at them very closely. I'm very interested  
5 in trying to find ways to incorporate into our  
6 reimbursement system for managed care incentives that  
7 will ramp up the payments for those plans that have  
8 better measures in terms of quality.

9 We've also participated in the California  
10 Healthcare Foundation effort to put together a  
11 scorecard; and as a departmental manager, I'm very  
12 interested in having available, up-to-date data for a  
13 range of statistics to sort of look at my own sort of  
14 management dashboard and figure out where I need to pay  
15 attention. Those are important, I think, for me.

16 CHAIRMAN STEINBERG: My last question, and then  
17 I'll turn it over.

18 We know that 10 percent of the Medi-Cal  
19 caseload drives 90 percent of the cost -- frequent  
20 users. I know the California Endowment has put forward  
21 resources to help focus on this issue.

22 Again, in this dramatic era of budget crisis,  
23 what can we do to ratchet down the expenditure growth  
24 without jeopardizing access or quality of care?

25 MR. DOUGLAS: This is an area where we think

20

1 there is a lot of opportunity to create better systems  
2 of care for exactly the population you're talking about,  
3 those who have really complex chronic conditions that  
4 consume the majority of our costs. And there are  
5 promising practices out there that allow for these  
6 beneficiaries to create more coordinated systems where  
7 you ensure that they have a primary care provider to  
8 manage their care, that you use resources to better  
9 coordinate their care across both the health as well as  
10 the behavioral health systems, knowing that many of  
11 these individuals that consume cause part of the reason  
12 for over-utilization are not receiving the right  
13 utilization at the right time is because of the lack of  
14 coordination.

15 I know last year that, Senator Steinberg, that  
16 you had a bill that focused on this population.

17 CHAIRMAN STEINBERG: A vetoed bill.

18 MR. DOUGLAS: It was a vetoed bill, but a bill  
19 that we believe had the components, as part of a broader  
20 approach, to focus on all those individuals in our  
21 fee-for-service system who have chronic conditions.

22 CHAIRMAN STEINBERG: I don't care whether it's  
23 my bill or not this year; but, again, this needs to be a  
24 subject of the budget negotiations coming up.

25 Again, my message to you guys today -- And

21

1 we're going to heartily recommend your confirmation.  
2 You're great public servants and the right people for  
3 the job, but I'm using this platform, obviously, to say  
4 that the next several weeks, and month, and two months,  
5 are really crucial, and that you need to help us.

6 I know you defend the governor's budget and all  
7 that, but as we get into a real negotiation, we need to  
8 look at these issues like how we ratchet down the  
9 expenditures for 90 percent of those folks, different  
10 systems of care, outcome-based measurement, going  
11 aggressively after the fraud you've identified, because  
12 our solemn responsibility, it seems to me, is to not  
13 hurt the people who are acting honestly and need the  
14 help. And you have more of the expertise and answers  
15 than many of us do. So that's my plea to you.

16 CHAIRMAN STEINBERG: Senators Aanstad, Dutton

17 SENATOR DUTTON: Just one quick comment, and I  
18 apologize for not being here for everything. But with  
19 regards to the information that you need to be able to  
20 have access to to crackdown on fraud and waste and so  
21 forth, there's a plan for updating the computer system.  
22 Are you able to pursue aggressively in the area of  
23 needing the information that you need to crack down on  
24 the fraud and so forth, or is the upgrading of the  
25 computer system going to be critical to that effort?

22



1 And I also understand, too, that the upgrades  
2 we're talking about are actually going to somewhat fit  
3 within the current dollars that we're spending to  
4 maintain the system now anyway, so there's really no  
5 increase in cost for us to see an improvement in our  
6 system.

7 I'm just wondering how critical the  
8 improvements are to your ability, your effectiveness, in  
9 being able to crack down on fraud and waste.

10 MR. MAXWELL-JOLLY: Well, in terms of the  
11 overall budget for how we're going to cover this, we  
12 don't have the data yet, so I'm not going to make any  
13 commitments for what we're going to fit in exactly, but  
14 it's certainly my hope that the economics will work out  
15 that way.

16 In terms of the new system, the way I  
17 understand the functionality of that system, its key  
18 contributing element for us will be able to quickly  
19 adapt our payment-review system to be able to respond to  
20 any areas where we see that there are gaps in how we're  
21 doing those reviews, to be able to catch stuff up front.  
22 When somebody puts a bill in, we see the kind of  
23 patterns that indicate erroneous billing, and it allows  
24 us to suspend those payments and do the extra check on  
25 those. Right now, our system is pretty awkward in its

23

1 ability to adjust -- to adapt to the various payments  
2 received, so I think that's a key element.

3 I think that I've probably found my nirvana in  
4 terms of access to data. I think anybody who knows me  
5 knows that I'm a data-hungry guy. I think I'm probably  
6 fully satisfied with what we have at the Department of  
7 Health Care Services. It is extremely detailed data  
8 about what's going on. What we have to do -- So I think  
9 that there are lots of opportunities currently to be  
10 able to detect and monitor areas. I think the  
11 responsiveness is the key.

12 Toby, do you --

13 MR. DOUGLAS: No, I think that --

14 You said it's fundamental on our ability to  
15 continue to be refined and provide more tools to detect  
16 fraud. We have a lot of information technology tools  
17 that we have right now outside of our claims processing  
18 system, but the more we can integrate it into the system  
19 and detect it immediately, the quicker we'll be able to  
20 root out these problems. So it will have a return on  
21 its investment.

22 CHAIRMAN STEINBERG: Okay.

23 Senator Aanestad.

24 SENATOR AANESTAD: Good afternoon. Thank you  
25 again for meeting with me this morning. We had a great

24

1 discussion. I just wanted to iterate one point that we  
2 talked about earlier, and that was --

3 In the Medi-Cal program, I serve 12 rural  
4 counties. In my 12 rural counties, there is a dearth of  
5 providers who have opted not to participate in the  
6 Medi-Cal program because of the low reimbursement rates.  
7 I have patients that have to drive two and a half,  
8 sometimes three hours to find the doctor that will take  
9 care of them. So just because they have a Medi-Cal card  
10 does not mean that they have access.

11 The administration, in the last couple of  
12 budget cycles, has proposed rate reductions that have  
13 been challenged in the courts, and realizing that  
14 California ranks number 49 out of 50 states in  
15 reimbursement rates to providers, yet the administration  
16 still thinks that the way to balance this budget is to  
17 further cut reimbursement rates, perhaps making us  
18 number 50 or even 51, the logic escapes me, then, as to  
19 how you think you can improve access to care by turning  
20 away providers. And do you support the administration's  
21 efforts in cutting the reimbursement rates? And how  
22 does that all tie in with the other two parts of the  
23 three-legged stool, rates, eligibility, and options?  
24 Whoever wants to handle that.

25 MR. DOUGLAS: As we discussed earlier today in

25

1 our conversation, the administration really, when we're  
2 stepping back, supports increasing rates, and as part of  
3 healthcare reform looked at that as one of the  
4 approaches to ensure that we are appropriately  
5 compensating our Medi-Cal providers.

6 SENATOR AANESTAD: Could have fooled me,  
7 because I just saw nothing but rate reductions in the  
8 last --

9 MR. DOUGLAS: As part of the healthcare reform  
10 proposal.

11 In the context of the budget and where we've  
12 been over the last several years with the budget,  
13 unfortunately Medi-Cal has been part of those proposals,  
14 and when you look at there's only so many ways to reduce  
15 expenditures in the program, and, unfortunately, the  
16 provider payment reductions have been on the table,  
17 acknowledging that they would have impacts on the  
18 compensation to our providers, but seeing also that we  
19 still do have -- provider enrollment continues to grow.

20 It is a balance in terms of supporting -- We  
21 want to make sure that we're adequately compensating our  
22 providers, but we have to balance that with the fact of  
23 our budget situation. So it's a fine balance. And  
24 where we have to look at these other areas around  
25 provider efficiencies or ways that we can provide

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1 administrative efficiency on what we do on provider  
2 enrollment, making sure that it's as easy as possible  
3 for them to enroll in terms of creating automated  
4 enrollment approaches, working on our claims processing  
5 system to make it easier for them submitting claims as  
6 well as the way we do our treatment authorization  
7 request.

8 But in this environment, it's very difficult  
9 not to turn to all three areas, and right now we're  
10 constrained, and many of them -- as you said, court  
11 injunctions, payment reductions, aren't on the table  
12 right now.

13 MR. MAXWELL-JOLLY: If I could add, one of the  
14 strategies -- I don't think it applies to much of your  
15 district, but certainly one of the strategies we've  
16 pursued is to try to expand Medi-Cal managed-care  
17 organizations in their delivery of services. And where  
18 we delegate to those organizations the ability to set  
19 physician rates at a level that's necessary for them to  
20 impanel enough physicians to serve the population, and  
21 by managing the overall budget for covering the  
22 individuals enrolled there, they're able to get the  
23 right balance between inpatient and outpatient rates.

24 We've been slower than we had hoped in the  
25 expansion of those managed care organizations, and I

27

1 What we're doing to get prepared for that is  
2 we're working with the California Healthcare Foundation  
3 to create a whole plan that will include actually  
4 reaching out to providers to make sure they're ready,  
5 and this will be both in urban areas as well as rural  
6 areas that have the administrative infrastructure to be  
7 able to meet the standard that needs to be in place to  
8 draw down this federal fund, which can be up to \$60,000.

9 So there will be efforts to make sure -- For  
10 example, right now we have a pilot in the northern  
11 Sierra part of the state for prescribing, where clinics  
12 in that area of the state are able to prescribe  
13 electronically prescriptions through electronic medical  
14 records that they have that's supported by the Medi-Cal  
15 program giving them information to our clinical  
16 information.

17 So we'll want to expand those types of  
18 opportunities, as you said, with 90 percent federal  
19 funding, to build the infrastructure in the rural areas  
20 and urban so that we can then provide them with this  
21 100 percent federal funds.

22 SENATOR AANESTAD: Would either of you admit  
23 that there's a shortage of physicians willing to  
24 participate in the Medi-Cal program, especially in rural  
25 California?

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1 don't know whether the infrastructure exists in any of  
2 your counties to be able to extend those organizations,  
3 but I think that that's been one strategy that's been  
4 very helpful for us to make sure we have adequate  
5 participation.

6 SENATOR AANESTAD: We had talked also about  
7 rural primary clinics, and I think that you both have a  
8 pretty good understanding of what cutting certain  
9 optional benefits does to the overall operations of the  
10 clinic, and you promised to look into that.

11 Final question here: The American Recovery and  
12 Reinvestment Act provides incentive payments for the  
13 adoption of electronic health records by certain  
14 eligible physicians, up to 90 percent match, I  
15 understand, for high-tech funds.

16 Does the department have any plan to work with  
17 doctors in rural areas where that infrastructure we just  
18 talked about is, perhaps, missing so they can become  
19 eligible in the high-tech program?

20 MR. MAXWELL-JOLLY: Toby, by you can take it.

21 MR. DOUGLAS: You're right. The fiscal  
22 stimulus puts a tremendous amount of funding in health  
23 information technology, and we'll be receiving  
24 100 percent federal funding to provide to our providers  
25 throughout the state.

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1 MR. MAXWELL-JOLLY: I think that there is  
2 concerns about a shortage of physicians of any kind  
3 in rural areas.

4 I recently attended the health reform panel  
5 that we had down in Clovis, and a number of the folks  
6 who were there were from rural areas, who raised the  
7 issue that a national health reform has got to address  
8 the question of physicians applied, because just having  
9 coverage doesn't mean you can access to a physician,  
10 whatever the kind of coverage it is you have. So, of  
11 course, there are challenges in rural areas, and we need  
12 to look carefully at ways that we can improve the supply  
13 in rural areas and in particular supply for those  
14 willing to take Medi-Cal.

15 SENATOR AANESTAD: And yet by cutting rates,  
16 how -- What plan does the department have?

17 MR. MAXWELL-JOLLY: I think you're right.  
18 Cutting rates is not a very good way to execute that  
19 kind of plan, and I think we need to look at other ways  
20 to bolster that supply of physicians.

21 MR. DOUGLAS: One thing we are doing in terms  
22 of specialty care where there have been concerns is  
23 around telemedicine, which is definitely something we  
24 want to promote in the rural areas.

25 In Medi-Cal, there's the opportunity to use

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1 telemedicine, for providers to bill for that. To that  
2 extent, there are issues with specialty physicians. We  
3 hope that clinics and others can access telemedicine,  
4 and in working with other physicians throughout the  
5 state in ways to deal with any shortages.

6 SENATOR AANESTAD: Thank you.

7 CHAIRMAN STEINBERG: Very good. Let's hear  
8 from witnesses in support of the nominees.

9 MS. THOMAS: Mr. Chair and Members, Terri  
0 Thomas on behalf of California Association of Public  
1 Hospitals and Health Systems. Would you like me to  
2 speak to both --

3 CHAIRMAN STEINBERG: Yes.

4 MS. THOMAS: I have known Mr. Maxwell-Jolly for  
5 many years, probably more years than we care to  
6 acknowledge, but I have great regard, as you do,  
7 Senators, for his service to the State of California in  
8 various capacities.

9 Let me say on behalf of CAPH, though, we are  
0 pleased to support Mr. Maxwell-Jolly's nomination. We  
1 believe that he brings demonstrated leadership and an  
2 appreciation for the need to improve the health and  
3 well-being for all Californians to the job.

4 We especially appreciate the intellectual rigor  
5 with which he tackles important multifaceted health-

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1 policies issues. His impressive intellect and decades  
2 of experience in government come at a time when  
3 government is facing extremely complex problems and  
4 challenging times. And we're confident that despite the  
5 fact that I think we're all in for some very tough times  
6 ahead, that Mr. Maxwell-Jolly will bring the leadership  
7 needed to navigate through these issues in a fair way  
8 and a way that involves the constituency groups and,  
9 actually, in a way that expresses as much heart as he  
10 possibly can.

11 On behalf of Mr. Douglas, CAPH is also very  
12 pleased to support the nomination of Mr. Douglas. We  
13 believe that he is a proven and dedicated advocate for  
14 Californians, particularly those of the most vulnerable  
15 populations. We know he understands the importance of  
16 the healthcare safety net, given his prior work with the  
17 San Mateo County Health Department, and his rapid rise  
18 into the Department of Health Care Services is certainly  
19 testament to his skills and his ability to deal with the  
20 scope and complexity of the issues.

21 We are pleased to support both of these  
22 nominations.

23 CHAIRMAN STEINBERG: Thank you.

24 San Mateo County. Millbrae?

25 MR. DOUGLAS: Close.

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1 CHAIRMAN STEINBERG: That's where I grew up.

2 MS. HILL: Mr. Chair and Members, Terri Cowger  
3 Hill of Cowger & Associates.

4 My firm represents not-for-profit statewide  
5 associations in the healthcare arena, and I'm here on  
6 behalf of 100% Campaign, Pico, California; the  
7 Children's Hospice and Palliative Care Coalition; and  
8 the Hemophilia Council of California. These are all  
9 representing patients.

10 And I've known David Maxwell-Jolly since I was  
11 a young intern -- press office intern for Senator  
12 Roberti in 1986, so that's how long ago that's been.  
13 And I have to say in the short tenure you've been in  
14 this position, you've just been there for the  
15 communities.

16 He came in on a Furlough Friday for a meeting  
17 in the governor's office with a suit and tie on to  
18 address the pediatric hospice waiver.

19 And Toby, I've only known for a short time, but  
20 he also has been so accessible to the patients, to the  
21 children. He spent the last year and a half working on  
22 the federal waiver. We just got approval for the  
23 pediatric hospice waiver, and it will be a much more  
24 appropriate care model for these children. It's a tough  
25 issue, and he spent numerous hours rolling his sleeves

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1 up and coming up with solutions.

2 So I look forward to the difficult days ahead.  
3 We may have fights on the budget, but I know that your  
4 commitment to the beneficiaries of the program is there,  
5 and I look forward to working with both of you gentlemen  
6 on these issues. Thank you.

7 MR. MECCA: Thank you, Senator Steinberg,  
8 Members of the Committee. I'm Frank Mecca, executive  
9 director of the County Welfare Directors Association.  
10 My members, among other things, administer the  
11 eligibility program for the state's Medi-Cal program  
12 and, as such, are the state's partner in making sure  
13 that eligible people get the healthcare -- get access to  
14 the healthcare they require.

15 As Mr. Maxwell-Jolly pointed out and as  
16 Mr. Douglas has shown us, they both thoroughly respect  
17 the partnership. And although we don't always agree, we  
18 definitely believe that they're capable, talented  
19 leaders.

20 I, like other people, have known both for a  
21 long time -- Mr. Maxwell-Jolly longer, although he is  
22 much older than I am --

23 CHAIRMAN STEINBERG: There you go. Give a guy  
24 a mic....

25 MR. MECCA: We strongly endorse their

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1 confirmation.

2 MS. LANDSBERG: Mr. Chair and Members,

3 Elizabeth Landsberg with the Western Center on Law and

4 Poverty here in support.

5 Mr. Douglas has shown a great willingness to

6 work with us as consumer advocates. As the speaker just

7 said, we don't always agree, but we very much care about

8 the details, and the department has shown a great

9 willingness to work with us to make sure those details

10 are done correctly for the benefit of consumers.

11 Before Mr. Douglas came, our colleagues at

12 Legal Aide of San Mateo told us how terrific he'd be,

13 and we look forward to working with him as we continue

14 to improve the Medi-Cal program moving forward. Thank

15 you.

16 MR. MICHELI: Mr. Chair and Members,

17 Chris Micheli on behalf of the California Ambulance

18 Association. Wanted to voice our support for the

19 Health Care Services Dream Team that you have before

20 you.

21 Actually, I've spent -- when David was in the

22 Senate and Toby the last half dozen years for a myriad

23 of healthcare clients, they have both been very

24 professional, very responsive, and we look forward to

25 continuing to work with them. Thank you.

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1 CHAIRMAN STEINBERG: Dream Team, but are they

2 miracle workers?

3 MR. RAMEY: Mr. Chair and Members, John Ramey

4 on behalf of Local Health Plans of California, the local

5 managed-care health plans.

6 We think it would be very difficult for the

7 State of California to find two individuals more

8 qualified by temperament, judgment, and experience for

9 these positions than these gentlemen, and we recommend

10 their confirmation to the Committee.

11 MS. FIELDS: Good afternoon, Mr. Chairman and

12 Members. I'm Cherie Fields with L.A. Care Health Plan.

13 We have 150,000 Medi-Cal managed care beneficiaries, and

14 we're in strong support of the confirmations of

15 Mr. Douglas and Mr. Maxwell-Jolly.

16 I've worked with Toby since 2002 when he was in

17 San Mateo, and I have had the pleasure to continue

18 working with him in the Department of Health Care

19 Services. I find him to be a very strong leader, and

20 he's very proud to be a process with the health plans.

21 In regards to Mr. Maxwell-Jolly, although I

22 haven't worked with him long, we've had several

23 meetings, and he has very innovative ideas on the

24 Medi-Cal program. I do look forward to meeting with

25 him. Thank you.

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1 CHAIRMAN STEINBERG: Very good. Are there any

2 witnesses in opposition to the nominees? If not, I

3 would happily take a motion.

4 Moved by Senator Aanestad.

5 And, again, a great thank-you for your

6 willingness to serve in difficult times, for making

7 public service, which often gets, I believe, unfairly

8 criticized, for making it your calling and for doing

9 what you can to help us and Californians through this

10 difficult time.

11 Please call the roll.

12 MS. BROWN: Senator Cedillo.

13 Dutton.

14 SENATOR DUTTON: Aye.

15 MS. BROWN: Dutton aye.

16 Oropeza.

17 Aanestad.

18 SENATOR AANESTAD: Aye.

19 MS. BROWN: Aanestad aye.

20 Steinberg.

21 CHAIRMAN STEINBERG: Aye.

22 MS. BROWN: Steinberg aye.

23 CHAIRMAN STEINBERG: The only thing I ask,

24 again, is that we feed some of this discussion into the

25 budget conference committee on how to minimize that

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1 billion-dollar proposed cut around reducing fraud and

2 around better systems of care for the 90 percent or the

3 10 percent who make up 90 percent of the service.

4 All right. Thank you very much. This will go

5 to the floor and I'm sure will pass easily.

6 Let's take a short break, please. Five

7 minutes.

8 (Recess taken.)

9 CHAIRMAN STEINBERG: All right. Before we call

10 up Mr. Wilkening, why don't we try to take care of the

11 other business.

12 (Discussion off the record.)

13 CHAIRMAN STEINBERG: We have one more item

14 left, which is file item 2C.

15 MR. SCHMIDT: We have a couple walk-ons.

16 (Discussion off the record.)

17 CHAIRMAN STEINBERG: Now, Mr. Wilkening, deputy

18 secretary of the Health and Human Services Agency,

19 welcome to the Committee.

20 MR. WILKENING: Thank you, Mr. Steinberg.

21 CHAIRMAN STEINBERG: Again, I want to give you

22 the opportunity to introduce any member of your family

23 or special guest.

24 MR. WILKENING: Thank you. My sister,

25 Shawn Tarman, is here.

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1 CHAIRMAN STEINBERG: Welcome.

2 MR. WILKENING: My father, Don Wilkening.

3 CHAIRMAN STEINBERG: Welcome.

4 MR. WILKENING: My mother, Nancy Volz, and her

5 husband, Jim Lock.

6 CHAIRMAN STEINBERG: Welcome, welcome. Welcome

7 to everyone. Glad you're here to watch the public

8 process.

9 All right, Mr. Wilkening. Welcome to you.

0 This is a very, very important position. If you want to

1 make a brief opening statement, go ahead, and I'll have

2 a couple questions for you.

3 MR. WILKENING: Thank you, Senator Steinberg.

4 Good afternoon. Thank you for the opportunity to appear

5 before you and to accept my qualifications to serve as

6 the undersecretary to the Health and Human Services

7 Agency.

8 I am grateful for the opportunity afforded me

9 by the governor to serve in this important position.

0 There are few agencies within state government whose

1 programs, services, and activities touch the lives of so

2 many California residents so directly and personally as

3 the Health and Human Services Agency.

4 As undersecretary for program and fiscal

5 affairs, I will assist Secretary Belshay to provide

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1 policy leadership and direction to reduce duplication

2 and fragmentation of activities among our departments in

3 developing and implementing policy, improve coordination

4 among departments on common programs, ensure program

5 integrity, and advance the governor's priorities on

6 health and human services issues.

7 I'll draw upon my experience as the program

8 budget manager for the Department of Finance as I assist

9 the secretary in her efforts to strike a balance between

0 the twin imperatives of maintaining access to essential

1 health and human services to California's most

2 disadvantaged and at-risk residents while pursuing a

3 way to better manage and control costs.

4 Since enactment of the budget in February, the

5 recession in California has deepened. Revenues have

6 dropped dramatically, and caseloads of many health and

7 human services programs have grown. These unprecedented

8 fiscal challenges compel difficult choices throughout

9 state government. This is especially true in Health and

0 Human Services, which represents 30 percent of the

1 state's general fund.

2 As you're all aware, the governor released two

3 versions of the May revision last week, one addressing

4 the impact of the continuing decline in revenues and

5 increasing the impacts of caseloads, and a contingency

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1 plan in the event the initiatives on yesterday's ballot

2 failed.

3 With the failure of those initiatives, the May

4 revision proposes \$2.8 billion dollars in reductions in

5 health and human services. These proposals will have

6 very direct and serious implications for health and

7 human services programs that provide essential services

8 and support to needy, vulnerable, and at-risk

9 Californians.

10 The May revision proposals reflect the

11 administration's efforts to set priorities to support

12 aggressive program integrity and antifraud efforts; to

13 focus resources on eligible individuals receiving

14 eligible services delivered by an eligible provider;

15 target essential services to those with the greatest

16 needs; and to maximize federal flexibility to enable

17 California to better manage Medi-Cal within available

18 resources.

19 The executive and legislative branches have a

20 shared responsibility to maintain access to essential

21 health and human services for our state's most

22 disadvantaged and at-risk residents while pursuing ways

23 to better manage and control costs over the long-term.

24 I look forward to working with you and

25 assisting the secretary in her efforts to promote health

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1 and well-being to a growing and increasingly diverse

2 California, and to work with our many partners and

3 individuals in collective efforts on behalf of the

4 people of California.

5 CHAIRMAN STEINBERG: Thank you, sir.

6 Let's get right to the questioning here. You

7 have a very important job. I mean, it's -- some might

8 say you are the Johnny-on-the-spot for making the very

9 toughest decisions, at least from the administration's

0 perspective, as to what should be cut.

1 I would like to begin where we sort of left off

2 with the two gentlemen we just talked to from Health

3 Services. The administration's proposing a billion

4 dollars or so cut to Medi-Cal, and we heard that there

5 is the potential, based upon prior audits, to capture in

6 the neighborhood of \$400 million dollars in savings by

7 rooting out the fraud, people who are not -- who are not

8 eligible. And, of course, if we were to successfully do

9 that, that would mean \$400 million dollars fewer actual

0 service cuts, or \$400 million dollars less in provider

1 rate cuts as we go about the difficult task ahead.

2 Can we do it?

3 MR. WILKENING: Our first priority in building

4 the May revision was to ensure the money that we're

5 currently spending be spent on eligible services and for

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1 people who are eligible for those services. So the  
2 antifraud initiative that David and Toby talked about is  
3 one of those ways that we ensured that.

4 We have that in four areas. They mentioned the  
5 three in the Medi-Cal area: the adult day health  
6 centers, the pharmacies, and the physicians. We also  
7 have one for in-home supportive services. We're  
8 anticipating about \$70 million dollars in savings  
9 associated with that effort in the first year. As with  
10 most things, it gears up over time. We think in the  
11 second year we can get a hundred million dollars in  
12 savings associated with that. So we're going after the  
13 areas that we think have the highest incidence of fraud  
14 and targeting those.

15 To continue to build and to get the  
16 \$400 million dollars, we would have to relook at what  
17 efforts you have to undertake to get to that level.  
18 This is what we thought was the best approach to putting  
19 in the resources that we needed to hit the highest areas  
20 first.

21 CHAIRMAN STEINBERG: So in the budget year,  
22 does the \$70 million dollars get scored as a savings?

23 MR. WILKENING: It's a net savings normally  
24 scored, yes.

25 CHAIRMAN STEINBERG: So when we talk about a

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1 finding fraud.

2 As David explained, it's also miscoding. It's  
3 overbilling. There's a whole host of things from what  
4 would just be mistakes on the part of people, through  
5 actual fraudulent activities.

6 CHAIRMAN STEINBERG: What about overlapping  
7 services and systems of care?

8 We talked a little bit about 90 percent of the  
9 money being spent on 10 percent of the population. We  
10 also know that different services often overlap. I  
11 mean, take a disabled adult, for example, maybe  
12 receiving income support through SSI, SSP, home care  
13 through IHSS, healthcare from Medi-Cal, potentially  
14 regional center supports. Is there any opportunity,  
15 even in the short term, to come up with a different  
16 system of care that allows the service to be provided  
17 and make the cuts, thus, non-service related?

18 MR. WILKENING: We haven't in the past looked  
19 at the overlaps between these various areas. On -- For  
20 instance, we know that when we have reductions like the  
21 ones we have on the table, we're impacting an individual  
22 multiple times. When you take their SSI/SSP benefit  
23 down, you take the potential of their Medi-Cal benefits  
24 down. We're hitting that same individual in multiple  
25 ways.

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1 billion-dollar cut, it's a billion dollars minus the 70  
2 million, or does the billion dollars include the  
3 savings?

4 MR. WILKENING: It would have had the savings  
5 associated with that in that number.

6 CHAIRMAN STEINBERG: What would it take in  
7 general to ramp up your time frame that you just  
8 described in a more aggressive way?

9 MR. WILKENING: Part of it is upfront work. So  
10 as David and Toby were explaining, a lot of what we're  
11 doing in Health Care Services, and also in IHSS, in  
12 looking at data mining, is going through the expenditure  
13 trends and looking to see where we have unusual trends,  
14 unusual circumstances. And that's where we're targeting  
15 the efforts.

16 So, for instance, IHSS, those are the highest  
17 hours. You're looking at physicians. You're looking at  
18 the average physician that has that type of patient base  
19 and looking to see what they're billing Medi-Cal, and is  
20 there deviation from that norm. So that's where we  
21 focus in those resources.

22 You could expand beyond that and target in a  
23 broader base with additional resources, but part of it  
24 is the upfront data mining method to make sure you're  
25 targeting in on those that have the most likelihood of

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1 The overlap in the services, the one instance  
2 would be IHSS services associated with somebody who is  
3 developmentally disabled, so they're receiving regional  
4 center services as well as IHSS. In those instances,  
5 the regional centers are the payer of last resort, so  
6 they go and find the generic services. So they would be  
7 accessing IHSS when they can; they'd be accessing  
8 medical care thorough Medi-Cal; they'd be accessing for  
9 children services through the education system before  
10 the regional centers incur the expense.

11 The regional centers have had fairly large  
12 reductions contemplated over the years, and they have  
13 tailored in there their resources. So when you look at  
14 what the regional centers are doing, they're making sure  
15 that they access those generic services to the best of  
16 their abilities.

17 Another place where we have looked at this is  
18 in autism, where -- private insurance, and trying to  
19 make sure private insurance pays for those services that  
20 are covered under private insurance and that just  
21 because they're associated with a developmentally  
22 disabled child, that they don't move that cost over to  
23 the state.

24 So there have been efforts underway between the  
25 Department of Managed Healthcare and the Department of

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1 Developmental Services trying to ensure that we're  
2 making sure that the private insurance pays when  
3 appropriate and that the regional center dollars are  
4 being used as the last resort.

5 CHAIRMAN STEINBERG: So in crafting the budget  
6 or in negotiating out a budget, what criteria should be  
7 used in determining program reductions?

8 MR. WILKENING: I think the first, and it gets  
9 to the antifraud effort, which is the first, that we're  
10 spending the money on people who are eligible; we're not  
11 spending money on fraudulent activities.

12 Now, we've endeavored to root out part of that,  
13 realizing there's still going to be some fraud there,  
14 but we've gone aggressively after the fraud, and we  
15 think that this is the initial first cut, and this is  
16 the best way to address that.

17 The next is to really target the services, look  
18 at what are essential services and target those with the  
19 greatest needs.

20 The other aspect of this is trying to make sure  
21 we maximize federal flexibility and federal funds, and  
22 that we draw down what we can to make sure that we're  
23 getting all the resources that California can, that it's  
24 entitled to.

25 CHAIRMAN STEINBERG: I'll turn it over to my

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1 colleague.

2 SENATOR AANESTAD: Again, thank you for our  
3 time this morning that we had together. You answered  
4 most of my questions there, but I'll come back with the  
5 same question that I asked the two previous nominees  
6 regarding reimbursement rates.

7 How can you improve access to healthcare,  
8 especially in rural California, by cutting reimbursement  
9 rates?

10 MR. WILKENING: Senator, cutting reimbursement  
11 rates obviously does not improve access, but in the  
12 fiscal environment in which we find ourselves, we have a  
13 lot of difficult cuts to make.

14 As I said, there's \$2.8 billion dollars in cuts  
15 in this May revision associated just with the Health and  
16 Human Services Agency, and that's on top of some fairly  
17 substantial cuts that were already adopted in February  
18 for this budget, including taking the wage rate for IHSS  
19 down and grant cuts both for CalWorks, SSI and SSP.

20 So I will not sit here and tell you that that's  
21 going to improve access. I would echo what Toby Douglas  
22 said to you, which is that this administration has  
23 recognized that increasing those rates will improve the  
24 access. Now, we did that through healthcare reform. We  
25 proposed that. We put it on the table. We added a

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1 funding structure that would have provided that.

2 Healthcare reform was not adopted, and so we  
3 find ourselves in a situation where we don't have a  
4 funding source to increase those rates, and, in fact,  
5 we're looking at a \$21 billion dollar hole at this  
6 point.

7 So there are lots of difficult cuts that we put  
8 on the table. This time, a provider rate cut is not on  
9 the table. We have the \$750 million dollar number, and  
10 we'll be trying to figure out -- we're working with the  
11 Obama administration to find ways to achieve that  
12 savings.

13 But one of the things -- As Toby and David  
14 pointed out, there's really only three ways that you can  
15 control costs in Medi-Cal. You either control the  
16 benefits, the eligibility, or the rates. Eligibility,  
17 we haven't been able to touch because of the American  
18 Recovery and Reinvestment Act. The rates we haven't  
19 been able to touch either because of the federal courts.  
20 We have several proposals in front of the legislature,  
21 and, in fact, some that have been adopted, that scale  
22 back benefits.

23 SENATOR AANESTAD: You oversee 33,000 state  
24 workers; is that correct?

25 MR. WILKENING: Yes.

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1 SENATOR AANESTAD: Do you need them all?

2 MR. WILKENING: We've had several cutbacks in  
3 staff over the last several years. We're looking at  
4 another 5,000 layoffs statewide. We're looking at  
5 probably a thousand, in my agency, layoffs and  
6 elimination of vacant positions. The vast majority of  
7 the positions in my agency are in two areas. They're in  
8 the developmental centers and state hospitals. Those  
9 have staffing standards associated with them that are in  
10 place to ensure the people that are receiving services  
11 from the state have adequate care. They also ensure  
12 that we're complying with the federal standards. In the  
13 absence of compliance with those federal standards,  
14 which the federal Department of Justice has been out to,  
15 I believe, every single state hospital and developmental  
16 center in the state over the last multiple years, and  
17 every time they go into one, we find things that can be  
18 improved and things where we're not compliant.

19 If we cut back too much in those areas, we risk  
20 having a federal receiver in the state hospitals and  
21 developmental centers. Those of you who have had the  
22 experience with the receiver in Corrections, the costs  
23 aren't going to go down if we have a federal receiver in  
24 the developmental centers and state hospitals. The  
25 receiver -- It's not their job to ensure that we're

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1 providing adequate services in the most cost-effective  
2 manner. Their job is to make sure you're complying with  
3 the federal standard and whatever that means and  
4 whatever that costs.

5 So to cut back too much in state staffing in  
6 this agency, I think we potentially run the risk of  
7 having receiverships in those two departments, which I  
8 think would be disastrous.

9 SENATOR AANESTAD: So you're basically talking  
10 about the 3 percent cut, and you could not withstand the  
11 10 percent cut?

12 MR. WILKENING: You know, we have the 3 percent  
13 cut. We're right now figuring out how to allocate that  
14 across the various departments within our agency.

15 I'd have to look at it, but the initial  
16 reaction is that I'd have to cut fairly deeply into the  
17 Department of Developmental Services and into mental  
18 health and would jeopardize patient care, in all  
19 likelihood.

20 CHAIRMAN STEINBERG: Can I follow up?

21 What about consolidations? That's going to be  
22 another hot topic as we go forward here.

23 For example, the Department of Mental Health,  
24 which I'm very familiar with, has both the  
25 responsibility for community mental health and also the

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1 of savings associated with a consolidation. I believe  
2 that across all of the ones proposed in the May  
3 revision, it's approximately 50 million general fund  
4 savings. But in the longer term, could there be  
5 benefits associated with streamlined provision of  
6 benefits to people? Yes. I think those are things we  
7 can look into and have a dialogue about.

8 CHAIRMAN STEINBERG: Again, I'm going to ask  
9 that you have that dialogue with legislative leaders in  
10 the budget conference committee, because I just could  
11 not in good conscience -- Well, how do I put this?  
12 We're going to make some awful decisions and some awful  
13 cuts. I'm going to do everything I can to push the idea  
14 that before we make those difficult service cuts, we  
15 ought to be considering every single potential  
16 streamlining of government that can be accomplished  
17 sooner rather than later.

18 And the ADP and Mental Health, given the  
19 crossover and the dual diagnosis of people, why should  
20 that be two separate departments? You know, I don't  
21 understand it. Why shouldn't there be more crossover  
22 between DDS and Mental Health?

23 I mean, you know, we're talking about a lot of  
24 areas where there is great overlap. And so, you know, I  
25 would urge the administration -- I know you're dealing

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1 state hospital system, and yet there seems to be a much  
2 more significant overlap, for example, between community  
3 mental health and the Department of Alcohol and Drug  
4 Programs.

5 Is the administration -- Could we save money,  
6 and would it make more policy sense to suggest some  
7 consolidations of state agencies in a way that has not  
8 been considered before?

9 MR. WILKENING: I think the May revision  
10 proposes a dozen or two consolidations or eliminations  
11 across state government.

12 There's only been two that impact directly on  
13 my agency. One is the movement of "Boe-EE-ha"  
14 (phonetic) from CAL EPA into the Department of Public  
15 Health, and the other is taking the Department of  
16 Community Services and Development and splitting it  
17 between the Department of Social Services and a new  
18 Department of Energy.

19 There are obviously other areas where we can  
20 look to do consolidations and then reforms. I think we  
21 put forward a dozen or two that's on the table across  
22 the state government, but obviously it opens the  
23 dialogue to continuing to look at other places where we  
24 might be able to find efficiencies.

25 In the short term, probably not a huge amount

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1 with the May revise now, but to be prepared to be  
2 pressed and pushed on a whole range of other options  
3 that are not yet on the table.

4 Another area I want to ask you about: There's  
5 been a lot of discussion in the news lately, in light of  
6 the campaign, the Prop 1E, the Mental Health Services  
7 Act and Prop 63. When can we expect -- When can we  
8 expect a full and public evaluation of the outcome that  
9 have been achieved as a result of the first year's  
10 implementation of the Mental Health Services Act?

11 MR. WILKENING: I'll have to get back to you on  
12 that, Senator.

13 CHAIRMAN STEINBERG: Please. I mean, you know,  
14 the advocates have heard my frustration consistently,  
15 and I know I probably sound very frustrated today. But  
16 in the midst of, you know, the politics around this  
17 issue, I know for a fact that that act is saving  
18 thousands of lives. I don't think the people of  
19 California know it. I don't think the people of  
20 California have been informed to one iota what this act  
21 is achieving.

22 (Discussion off the record between  
23 Senator Aanestad and Chairman Steinberg.)

24 CHAIRMAN STEINBERG: Yes. The secret ballot.  
25 Everyone voted. Whatever.

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1 But now that we're going forward here, I would  
2 like to see a much more aggressive -- and I'm not  
3 talking about a PR campaign. I'm talking about a simple  
4 reporting to the public as to what this act is doing,  
5 because one of the questions in the campaign was: Why  
6 is this money in reserve, and what are the plans for its  
7 usage?

8 And I think the department needs a real step up  
9 when it comes to being much more forthcoming about  
0 outcomes and about evaluation.

1 I would appreciate if you report back to us as  
2 to when we may see the first public -- the first public  
3 statement and report on what the act has thus far  
4 accomplished. Thank you.

5 Witnesses in support.

6 MR. MECCA: Thank you, Mr. Chairman. Frank  
7 Mecca on behalf of the County Welfare Directors  
8 Association. We're here to support the nomination of  
9 Mike Wilkening.

0 We've been on the receiving end of a lot of  
1 budget proposals over the last several years when  
2 Mike was at finance, and we've consistently found him to  
3 be collaborative, open, and without ideology, but  
4 motivated by pragmatism and problem solving. And we're  
5 convinced that he'll take those attributes with him to

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1 the agency, so we strongly endorse his confirmation.

2 MR. ROLLENS: Mr. Chairman and Members, Rick  
3 Rollens. I'm here today on behalf of ARCA, Association  
4 of Regional Center Agencies. In your binder you have a  
5 letter of recommendation from ARCA for Mr. Wilkening's  
6 confirmation. We've had many years of work alongside of  
7 Mr. Wilkening when he was at Department of Finance. And  
8 now in the administration of the Health and Human  
9 Services Agency, we strongly urge your confirmation for  
0 him to this post.

1 CHAIRMAN STEINBERG: Thank you, Mr. Rollens.

2 MR. ROLLENS: Thank you.

3 CHAIRMAN STEINBERG: Sir.

4 MR. RAMEY: Hi. John Ramey representing the  
5 local health plans of California, the nonprofit managed  
6 care plans.

7 I once, over 20 years ago, held the position  
8 similarly titled in the Health -- at that time, the  
9 Health and Welfare Agency, for which Michael is. We  
0 recommend confirmation of Michael. These positions are  
1 very difficult, especially in these very difficult  
2 times, and I think Michael's training, his position, and  
3 judgment are well-suited for the position. We recommend  
4 his confirmation.

5 CHAIRMAN STEINBERG: Thank you very much.

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1 Appreciate it.

2 Hello.

3 MR. McCAFFERY: Hello, Senator and Members of  
4 the Committee. My name is Tom McCaffery. I'm with Blue  
5 Shield of California. I've known Mike since 1996 and  
6 most recently worked with him in 2006 and 2007 when I  
7 was serving in -- was in the Department of Health  
8 Services and Mike was in the Department of Finance. And  
9 I think some of the qualities I found in working with  
10 him at that time will serve him well in this position.

11 I think, as you mentioned, Senator, Mike, like  
12 the other two candidates, has a demonstrated commitment  
13 to public service, number one; and it's a vocation and  
14 calling for him, number two, very much committed to the  
15 policy process.

16 As Frank mentioned earlier, I think Mike  
17 approaches things in a very calm, measured way, looks at  
18 data in and out to make decisions, and collaborates with  
19 all affected parties, stakeholders, program experts, and  
20 the legislature, before making decisions and  
21 recommendations.

22 And, finally, I want to mention his integrity.  
23 Someone who is very honest and straightforward with his  
24 dealings with everybody, regardless of position on an  
25 issue.

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1 I recognize this is a very challenging time for  
2 this state, and I don't think state service could have  
3 any better candidate than Mike for this important  
4 position.

5 CHAIRMAN STEINBERG: Thank you. Very good  
6 testimony.

7 Anybody else in support? Mother? Sister?  
8 Just kidding.

9 Is there anyone in opposition?

10 Okay. I think the last witness spoke very  
11 well. This is a difficult time, and we want to commend  
12 your willingness to step up and take on a very, very  
13 difficult task and only ask you that you continue to do  
14 what I believe you are doing, and that is to wring every  
15 efficiency, every potential consolidation, every  
16 potential option, to be able to deliver the services to  
17 people in a different and more efficient way.

18 I know that's always easier said than done,  
19 but every \$10 million dollars, every hundred million  
20 dollars, every opportunity we have to ramp up the fraud  
21 savings from 70 to 100 to 150, we can do that in a year  
22 rather than two years, those are real services saved.

23 So we're going to wrestle a little bit during  
24 this budget process to push the department and the  
25 agency to do more of it, because it relates directly to

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1 the bottom line. And I know your interest is the same.  
2 Take a motion.  
3 SENATOR AANESTAD: So moved.  
4 CHAIRMAN STEINBERG: Moved by Senator Aanestad.  
5 Where is Mr. Dutton?  
6 (Discussion off the record.)  
7 CHAIRMAN STEINBERG: Okay. Why don't we open  
8 the roll. Go ahead.  
9 MS. BROWN: Senator Cedillo.  
10 Dutton.  
11 Oropeza.  
12 Aanestad.  
13 SENATOR AANESTAD: Aye.  
14 MS. BROWN: Aanestad aye.  
15 Steinberg.  
16 CHAIRMAN STEINBERG: Aye.  
17 MS. BROWN: Steinberg aye.  
18 CHAIRMAN STEINBERG: Two nothing. There's a  
19 lot of suspense here. It's two nothing. It takes three  
20 votes. What shall we do?  
21 Well, I'll tell you what we will do.  
22 Do you know how long he's going to be?  
23 SERGEANT WATTENBURGER: I'll check right now.  
24 CHAIRMAN STEINBERG: Okay.  
25 (Pause.)

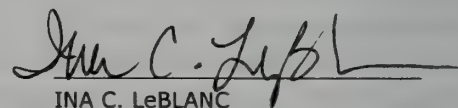
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1 SENATOR DUTTON: Aye.  
2 CHAIRMAN STEINBERG: Senator Dutton, we insist  
3 that you be in two places at one time.  
4 This is Mr. Wilkening.  
5 CHAIRMAN STEINBERG: Please call Senator  
6 Dutton.  
7 MS. BROWN: Senator Dutton.  
8 SENATOR DUTTON: Aye.  
9 MS. BROWN: Senator Dutton, aye.  
10 CHAIRMAN STEINBERG: Very good. That goes out  
11 on a three-nothing vote. I'm sure that will go to the  
12 floor without any problem. And thank you again.  
13 MR. WILKENING: Thank you, Senator.  
14 CHAIRMAN STEINBERG: We will stand in  
15 adjournment.  
16 (Thereupon, the Senate Rules Committee hearing  
17 adjourned at 3:12 p.m.)  
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2 I, INA C. LeBLANC, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify  
4 that I am a disinterested person herein; that the  
5 foregoing transcript of the Senate Rules Committee  
6 hearing was reported verbatim in shorthand by me,  
7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.  
10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in  
12 any way interested in the outcome of said hearing.  
13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 26<sup>th</sup> day of May, 2009.  
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INA C. LeBLANC  
CSR No. 6713

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1 APPENDIX  
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David Maxwell-Jolly  
Response:

Senate Confirmation Hearing  
David Maxwell-Jolly, Director  
California Department of Health Care Services  
May 20, 2008

**1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as director of DHCS? How will you measure your success?**

My first responsibility is to continue the development of the skilled and professional staff at DHCS. We are both a long-standing and a new organization. The future success of Medi-Cal and our other health coverage programs depends on creating a department where people feel they can develop their talents, realize their ambitions, and feel valued for the contributions they make. It's my job to help those things happen.

Second, I want to develop strong relationships with our program partners in other state departments and in the counties. The success of our program depends upon close and effective cooperation with the set of public agencies we rely on to deliver many of the services we finance.

Third, I want to advance some important programmatic priorities. We have significant opportunities this year for reforming health care both at the national level, and also here in California in the context of our hospital financing waiver. We need to do all we can to make sure that those efforts provide important improvements for our beneficiaries and for low-income uninsured Californians. I want to do all I can to protect the integrity of the program and ensure that our tax dollars are being spent well. This means paying close attention to the work of detecting and eliminating fraud from the program.

Finally, I want to expand opportunities for our disabled beneficiaries to have access to services in the least restrictive settings possible. This requires careful coordination of care to ensure that alternatives to institutional care are truly accessible.

I don't think I could have taken on these responsibilities in a more challenging time. The overall fiscal challenges of the state, not only this year but for the foreseeable future, make it difficult for me to commit to specific measures of success. As you can see, my goals are focused less on expanding our program's role, and more about how to use the resources we have more effectively. This is important work the staff of DHCS has always undertaken to improve the return to taxpayers and our beneficiaries.

**2. In the context of the state's health care system, what do you see as Medi-Cal's role, as well as its challenges?**

~~Senate Rules Committee~~

MAY 28 2008

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~~Appointment~~

The Medi-Cal program has proven to be a great success in advancing the value that low-income and disabled Californians should have access to the services they need to maintain their health. It provides financing to support the provision of services for those who qualify for the program. Consistent with federal law, the Medi-Cal program also provides supplemental funding to reimburse hospitals and other providers for providing care to the many uninsured individuals that have serious health care needs. There are many important providers of health care in California who could not survive financially without the financial support that Medi-Cal provides.

The challenges we face are many, but there are two key challenges. Foremost is complexity. Medi-Cal encompasses many programs that provide services to diverse populations with very different needs. It is delivered through a complex network of providers and vendors. Access to the program requires passing a complex eligibility review. All of this is accomplished under a complex set of state and federal laws and regulations. This complexity is a challenge for the state to administer and manage. It is a challenge for beneficiaries to navigate the available provider networks to get the care they need. It is a challenge for providers to navigate the systems for reimbursement of services rendered.

The other key challenge is that Medi-Cal costs continue to increase. While the rate of increase is not as high as that experienced by other sectors of the health industry, the steady annual increase is a continual pressure on the finances of the state, and at times outstrips the state's ability to afford the increases. We have a long history of working to slow that rate of increase in ways that continue to meet the needs of our beneficiaries. This year we have faced particularly painful choices given the state's serious financial condition. We have also been hindered in our ability to control the costs through rate changes.

**3. Medi-Cal provides funding for eligible services in most health and human services departments, including mental health, social services, developmental services, and aging. How can DHCS improve services and outcomes through better coordination across programs and departments?**

DHCS has extensive interdepartmental partnerships through which a significant share of Medi-Cal services is delivered. Each year DHCS claims over \$6.6 billion in federal funds to pass on to other state departments to support the health care services they provide to Medi-Cal beneficiaries. I have made it my goal to be sure that the joint efforts between our departments are as effective as possible. Effective partnerships require close communication and a shared appreciation for each other's goals and constraints. That communication needs to begin at the top, and to that end I have begun routine, periodic meetings with the leadership of our partner departments. I want to ensure that we stay up-to-date on the duties we share and that we are moving issues as quickly as possible. Collaboration between the departments happens up and down the organization, and we need to make sure that the required structures are in place to keep information flowing as we sort through problems. In many cases the delivery of



services also involves county agencies or other external stakeholders, so the communication protocols have to extend to these additional partners who need a clear statement of each department's roles and responsibilities.

Whenever another department takes on the task of administering covered services to Medi-Cal beneficiaries, DHCS retains the responsibility to monitor the programmatic and fiscal aspects of that care. In the past the department has approached these responsibilities differently for each joint program. I plan on reviewing these oversight functions to determine the extent to which we can develop a replicable structure for how we handle these responsibilities. In that way, both our own staff and our department partners will be able to clearly understand how we will exercise our oversight responsibilities.

- 4. The DHCS is the state's sole Medicaid state agency and serves as a focal point for all Medicaid Waivers, including those which pertain to the DMH, DDS, and DSS. Waivers can help provide an alternative to institutionalization. In fact, the state operates over 30 such Waivers several of which are multibillion dollar programs, such as the Home and Community-Based Waiver within the DDS, as well as the Mental Health Managed Care Waiver within the DMH. What actions is the DHCS taking to ensure cost-neutrality with these Waivers as well as fiscal integrity with the federal CMS? How does the DHCS monitor Waivers administered by these other departments?**

Each waiver that the department administers has its own particular administrative approach because of differences in how the state administers each of the programs that benefit from the waivers. For each waiver, as with any joint interdepartmental enterprise, DHCS and the other departments enter into an interagency agreement that defines the roles and responsibilities of the two entities in administering the program and delineates DHCS oversight responsibilities.

The waiver for the developmentally disabled, a home and community based waiver under Section 1915(c), is administered through the service delivery mechanism operated by the regional centers. DHCS collaborates with DDS in conducting onsite reviews of the regional centers, interviewing staff, clients, and providers and establishing corrective action plans for any deficiencies.

The Department of Mental Health administers the mental health managed care waiver, authorized under Section 1915(b) that allows the program to offer care through a limited set of providers. This waiver provides significant funding for county mental health programs to serve Medi-Cal eligible clients. This waiver provides federal funds to help reimburse the cost of service paid by county programs. It requires the administration claiming process through which counties identify the nature and cost of services they have funded. We are developing a new automated system that will help to improve the efficiency and accuracy of this claiming system. This system will be key to ensuring that the expenditures claimed under the waiver are timely and accurate. We are also



establishing a joint oversight taskforce among DMH, county mental health directors, and our department to jointly guide the administration of this waiver and the implementation of the new system.

The department administers several other home and community based waivers either on its own or with the support of other departments that offer alternatives to institutionalization. Each of these waivers has operating approaches that provide assurances that cost neutrality will be met, not only based on the approach approved by the federal CMS but also with regard to state costs as reviewed by the Department of Finance.

**5. The DHCS has not been completing regulation packages for the Medi-Cal Program. The Legislative Analyst's Office also recently noted their concerns (February 2009 Health Issues publication) with the lack of a regulatory framework for the program. Please provide a detailed update regarding the DHCS' regulation schedule. As Director, what priorities do you have regarding the development and implementation of regulations for this \$37 billion dollar program?**

The department has completed six regulation packages over that past 12 months. There are currently 36 packages in various stages of the process. Of these we have targeted a list of packages for priority treatment due to either their difficulty or a pressing need to get them into place, or both. Of these, two have been completed; one has passed the development stage and is in review; and one has been out for public comment and is now with the Office of Administrative Law for review.

We are also taking several steps to ensure that regulations are developed in a timely manner. With turnover that has occurred in the department, many divisions lack personnel with experience in developing and completing regulations. We have launched a new training course in which small groups of employees receive training from experts in the Office of Regulations. We have prepared a comprehensive manual that will assist staff in the preparation of regulation packages. We established a new team within the legal office, led by an experienced senior attorney to advise the Office of Regulations, oversee various regulation projects, and troubleshoot problem packages.

We have also added technological innovations to support our work. First, we are using more formal project management tools to plan and monitor the development of each regulation package. This will allow the regulation unit and management to monitor the progress of each package through the various steps in the development process and the Administrative Procedures Act (APA) process. The priority packages are currently being tracked using these management tools. Eventually, all packages will be tracked using this system.

Finally, we are developing a pilot project for a database of county eligibility policy letters, with particular emphasis on those letters that the department released under an

exemption from the APA. The database will enable a user to search the letters and applicable eligibility regulations and to determine the interrelationship of the various letters and the existing regulations. Our county letters provide detailed information on each change in policy that has been implemented over time, but it can be difficult to know when the provisions of one letter have been superseded by a later one. This database will clearly show which portions of a letter are applicable and which have been amended by later letters. It offers an interim tool that can provide a very up-to-date picture of the current eligibility rules.

## **6. What do you see as the major cost drivers of the Medi-Cal program?**

Over the past ten years the Medi-Cal program's costs have grown at about 7% annually. Half of this increase has been due to eligibility expansions. In 2000 we increased the income eligibility standard for families on Medi-Cal, and gave two-parent families the same access to the program as single parent families. The next year we increased spend down limits for aged and disabled who have a share of cost.

These eligibility expansions have increased the share of the population covered by Medi-Cal – from about 15 percent of the population in 1999 to about 18 percent in 2008. This increase has helped to keep relatively stable the share of the population that is uninsured by offsetting declines in the share of persons with employer-based coverage.

The other half of cost increases -- about 3.6% -- has been due to increases in the cost per eligible, stemming from three sources: 1) increases in the prices we pay for medical services, 2) changes in the mix of services we provide, and 3) changes in medical technology that can add to the cost of care.

The 3.6% rate of increase in cost per eligible has been consistent for the past ten years and is below the 4.5% increase in medical prices generally experienced in California. It is also substantially below the 10% average annual increase seen during this same period for premiums for employer-based health coverage.

It is well recognized that a large share of health services for any population is provided to a relatively small subpopulation. Our disabled beneficiaries are the highest cost Medi-Cal category on average, and about 10 percent of this group account for nearly 60 percent of the group's health care costs. Any analysis of growth in the cost for the Medi-Cal program needs to consider how we deliver care to these beneficiaries with significant care needs.

## **7. What are your ideas for keeping down the rate of cost increases and still deliver quality services?**

The Medi-Cal program has a great record in moderating cost increases. We have accomplished this through strict control of rates and by expanding our reliance on



service delivery approaches that help to encourage the most cost effective use of resources.

We will continue to be vigilant regarding our rate structure to be sure that we are doing all we can to get the best prices we can. We have also done a lot of work to encourage more cost effective care management. While much of our population can benefit from better care management through enrollment in managed care organizations, we have two pilots under way to support the management of care for beneficiaries in the fee-for-service system. The Disease Management and Care Management pilots, which began in 2007, target individuals with serious chronic conditions. They provide participants with access to a regular provider, medical advice lines, and other support services. Another approach in our Coordinated Care Management Program is expected to begin this year. It will enroll seniors or persons with disabilities who have chronic conditions and the mentally ill, and it will work to coordinate care for these individuals across all the settings in which they receive fee-for-service care. I believe a lot can be gained by continuing to test, refine, and expand these approaches.

We are also interested in exploring opportunities for better care coordination in our California Children's Services program. This program provides essential services to a very vulnerable population, but there is widespread concern that the program is not doing the best it can to ensure that its limited resources are used effectively.

**8. As the debate on national health care reform begins, what should California's priorities be, and how can the state play a leadership role in these discussions?**

This year promises to be an important one for national health reform. California can be proud of its role in helping to prepare the nation for the debate that is now under way. The Governor's intensive efforts through 2007 to reform California's health system demonstrated that we can bring together a diverse coalition of interests, who may traditionally not be eager to share the podium in support of a comprehensive reform proposal, but who can be brought together to support a collective solution. The 2007 principles of shared responsibility, guaranteed access to affordable coverage, and a focus on quality and prevention are echoed in the principles articulated by the new Administration in Washington. The Governor has pledged to support the President's effort to achieve meaningful reform this year. To work for us, that reform needs to take into account California's existing conditions – a high share of our population lacks coverage, the relatively high share of the population on Medi-Cal, our insurance market, our reliance on managed care, the significant number of undocumented residents, our traditionally low Medi-Cal reimbursement rates, and the state's financial limitations. We need to make sure that the national solution takes these important issues into account so that the reforms will advance the goals we have attempted to advance. We stand ready to provide any assistance we can to those developing the national reform approaches. Many of the issues up for debate in D.C. are the same issues we wrestled with in 2007.



**9. How can the state improve its relationship with the counties and ultimately improve the health outcomes of the individuals they both serve?**

Throughout my career I have been a student of the complex relationship between the state and the counties. My most recent experience with the child support program taught me a lot about how the state and counties can work together toward a common end. I have always tried to keep in mind the fact that it is the counties who have the responsibility to directly provide many of the services that the state offers to its residents. It is the county staff that has to respond face-to-face to constituents with complaints or whose needs are not being met. The unavoidable limitations on public finances put great strain on the state-county relationship. But we have to work hard to make sure that those strains don't keep us from working together and that we are thoughtfully allocating our limited resources and getting the most out of them.

So how do you make sure that the state-county relationship is strong and productive? First and foremost, the state has to fulfill its responsibility in developing a shared vision for the programs it directs. It is our responsibility, in consultation with local government and other stakeholders, to develop the sense of direction and priority in how we are managing the programs. The clearer that vision and the more broadly understood and shared it is, the better will be the state-county working relationship.

The key to executing that vision effectively is good communication. This is something that doesn't happen by itself in government, even with the best of intentions. Habit, training, convenience and the law all lead us in government to communicate up and down the chain of command. Building effective state-county communication requires focused attention on getting across a shared vision of where we are going, and finding the important points of communication that need to be developed to get the work done. It requires developing explicit means of communication – e.g. joint work groups, weekly status calls, county participation in state activities, and state participation in county activities. And these points of communication need to be reassessed regularly to make sure they fulfill an ongoing need, are working, or whether they need to be redesigned. Above all, these processes need regular executive attention to make sure that the communication leads to results, that the shared information gets to the right place in each institution and that it informs and helps to shape the decisions of each institution.

**10. What do you see as the role of the department in overseeing the county departments that conduct Medi-Cal eligibility?**

Counties play a vital role in making sure that Californians get the health care they need by providing access to eligibility determinations that are done quickly and accurately. They also play an important role in controlling Medi-Cal costs by taking timely and appropriate action when a beneficiary's circumstances change so that they are no longer eligible. Medi-Cal eligibility determination is not a static operation. We have

seen constant change in the important elements of the eligibility process over the past ten years that require innovation and adaptability on the part of local eligibility operations. It is a highly automated process that also has seen significant change in the systems supporting the work.

DHCS has processes to provide structured quality measurement to evaluate county performance in fulfilling these responsibilities. We receive regular assessments from each county regarding their work. It allows the state to intervene with counties where there are relatively high error rates to identify the problems and take the actions needed to correct the errors.

As a result of the state's financial situation this year we have not provided the counties with additional funds to cover increased local costs. This means that the local welfare departments will have to economize in their eligibility operation by finding ways to reduce costs. In some cases this will mean reducing effective staffing, which can lead to delays in processing application and redeterminations. The state can provide leadership in helping to manage with less by reviewing our business processes to make sure we are getting the job done as efficiently as possible. We can also provide guidance on how to prioritize the work.

**11. The California Children's Services Program (CCS) provides specialized, pediatric care to very medically involved children. Several hearings have been convened over the past few years regarding the need to streamline the program, including treatment authorizations, eligibility processing, and interactions with other programs including the Healthy Families Program and the Regional Centers. What actions is the DHCS taking to reduce the administrative burden of this program on the counties and provider groups to ensure a cost-effective CCS Program?**

Since I assumed the duties of Director in January, I have heard from many quarters their dissatisfaction with the way the CCS program operates. We are interested in getting a better understanding of the sources of dissatisfaction and in exploring opportunities for better care coordination in our California Children's Services program. This is a critically important program, and it is important that we are doing the best we can to be sure our limited resources are used effectively. We have ongoing consultations with the counties on ways to improve the process we have, and it's clear that improvements can be made. We have been exploring the best way to allocate resources among the counties and how to maximize the amount of federal funding we are claiming. We need to open up a wider conversation about how we approach meeting the needs of these vulnerable children. The challenge is to build on the strengths of the existing system while at the same time finding ways to reduce the administrative burden while still living within limited budgets. I am encouraged by the openness of stakeholders to roll up their sleeves and see what we can do to improve this vital program.



**12. What has the department done to increase enrollment of the eligible, but uninsured Californians?**

While the current fiscal climate presents challenges for the Department, we continue to actively work to ensure that eligible Californians are enrolled in the programs for which they are qualified. In the past the state has had some success in encouraging enrollment of children who were eligible for Medi-Cal or Healthy Families. We have begun planning for the implementation of a user-friendly web portal that can simplify the application process for a wide set of public programs. The California Health and Human Services Agency is leading the work, with the support of the California HealthCare Foundation, representatives from key state departments and county welfare departments. This approach promises to simplify the application process and to encourage enrollment. We are also planning for the simplification of the citizenship verification process authorized under the recently passed Child Health Insurance Program Reauthorization Act, which will help to remove some of the paperwork barriers that applicants have faced.

**13. Given the relatively low provider rates, what can the Medi-Cal program do to improve access to care for its enrollees?**

As access to medical coverage has increased through expanded eligibility for Medi-Cal, it increases pressure on the program to make sure that the provider supply is sufficient to provide the required services. This has certainly been a challenge over the past ten years as Medi-Cal enrollment has increased. It will be increasingly important if federal actions on health reform result in further expansion of coverage for Californians.

One of the most effective means available to the department to assure access for its enrollees is through the expansion of organized systems of care, such as managed care. These organizations, in their varied forms, have found ways to make sure that enrollees have access to the supply of providers that they need. They have been able to leverage their existing provider relationships and design fee structures that respond to the particular provider supply conditions in each locality.

In some cases, we have made special adjustments in fee-for-service rates to help improve access. For example, the rate adjustment for pediatric sub-specialty care helps ensure access to care for seriously ill children.

In the past few years, under the funding mechanisms available through the hospital financing waiver, the department has augmented support for safety-net hospitals throughout the state. This includes direct support for inpatient care and increased funding for services to the uninsured through our coverage. There has been steady growth in the payments provided to our federally qualified health centers whose reimbursement rates take into account their role in treating the uninsured.



We have also been working to improve the provider's experience when dealing with Medi-Cal. This begins with provider enrollment, where we have worked to streamline the enrollment process, to expedite change of location applications and enrollment of hospital-based physicians. We are also in the process of developing an on-line application that will help to simplify the enrollment process. We have also been working with providers to offer training on our review processes so that they understand how to document Treatment Authorization Requests (TARs). We are using electronic medical records where available rather than hard copy records. We are working across field offices to reduce inconsistencies. We are also implementing measures to reduce review requirements to shorten backlogs or eliminate reviews where the outcome is rarely in doubt.

**14. How has the department started to prepare for its role in overseeing the dispersal of funds for HIT?**

DHCS has been active in project work, planning and budgeting activities to prepare for the administration of stimulus funding for the Medi-Cal Incentive Program. Since 2007 we have been an active member in the National Medicaid Director's Multi-State Collaboration. The collaboration was created during the Medicaid Transformation Grant process where states received grant funding to implement health information technology. This collaboration and the HIT projects that have been implemented across the states has provided valuable "lessons learned" to California for our planning activities for the HITECH Act's Medicaid Incentive Program.

Recently, the California HealthCare Foundation committed to a partnership with us to engage in the implementation of the Medi-Cal Incentive Program. Under this effort DHCS will issue a Request for Proposal (RFP) to contract for the planning and implementation of the Medi-Cal Incentive Program. We have also created an opportunity for our Medicaid Management Information System (MMIS) vendors to bid on various aspects of the program as an optional service.

We have relevant experience in some aspects of HIT. DHCS implemented an e-prescribing proof of concept in August 2008 with the Northern Sierra Rural Health Network (NSRHN). This implementation resulted in DHCS' completion of system changes to our current MMIS for delivery of eligibility, formulary and medication histories to the point of care in a nine county region. We expect that e-prescribing will be a cost-effective element of HIT development.

**15. What do you think are the obstacles in getting clinics and practitioners to adopt HIT?**

Our experience with NSRHN e-prescribing efforts, as well as the Multi-State collaboration of Medicaid HIT projects, suggests that the biggest obstacle clinics and practitioners face in adopting HIT is the lack of technical support. The provider

community needs resources for re-engineering, implementation, provider adoption and ongoing meaningful use of their systems. While lack of funding is also an issue, we learned through our activities that "free is not free enough" to most providers. For example, in our e-prescribing initiative in NSRHN, a vendor provided the clinicians with a free e-prescribing tool in their practice. The feedback throughout the process has shown that despite the free tool, they needed ongoing technical support to use those tools. Those leading the Medicaid Transformation Grant projects, as well as Kaiser, which has successfully implemented electronic health records in its healthcare system, have had the same experience.

I also expect that we will encounter a wide range of interest in adopting HIT, depending on the particular practice setting, the scale of operation, and the kind of payer mix a practitioner has. Practitioners in larger, more organized settings are more likely to see the advantage of automation processes and records, and would be more able to sustain ongoing support. Practitioners in smaller settings may see less of a benefit from HIT and would have a more difficult time maintaining ongoing support for their systems once they are in place.

**16. What percentage of the department's managers do you anticipate will retire over the next two years and the next five years?**

According to CalPERS, the statewide average age of retirement of non-peace officer classifications is 60 years of age. Today 8.5% of the department's workforce is 60 years old or older; 4% of supervisors, managers, and executive level personnel are 60 or older. Another 4% of its supervisors, managers, and executive level personnel are between the ages of 55 to 60 years old. Although it is difficult to predict exactly when employees will retire, currently DHCS anticipates that approximately 4% to 7.6% of department leadership will retire over the next two to five years. Recognizing the potential for a significant loss of expertise, experience, and institutional knowledge we are taking steps to mitigate the loss of experienced supervisory and managerial staff and ensure that appropriate knowledge transfer is a top priority at DHCS.

**17. What actions have you taken to prepare for this potential staff turnover to minimize the impact on program operations? Specifically, how do you propose to attract and train replacement staff and also retain existing staff, where appropriate?**

Public service is a great career choice in California, particularly employment with the State of California. Few other employers provide the great sense of mission, the opportunities for career advancement, the challenges, and diversity of job experiences that our employees enjoy. We can't rely on these recruiting and retention advantages to take the place of our efforts to ensure we have the knowledgeable and talented workforce required to manage our complex programs. Workforce planning requires



efforts to recruit, develop and retain talented workforce. Here's what we have underway:

DHCS has conducted statewide open testing for the Staff Services Managers as well as the Staff Services Analysts project, which recruited well over 400 employees. DHCS is committing time and resources to participate on the Human Resources Modernization task forces, projects, committees and workgroups that continue efforts to streamline and improve upon the recruitment process. We are developing working relationships with professional organizations, and academia. We will continue to do all we can to let candidates know what a great place DHCS is to work.

We need to get a good understanding of our own workforce and what challenges we are likely to face. We are conducting a workforce analysis that will: 1) identify and document mission-critical occupations and competencies, 2) identify gaps between the current staff and future needs, and 3) recommend strategies to fill these gaps.

We have to retain and develop our staff. In July of 2008, DHCS established the Workforce Planning and Development Office (WPDO) to lead workforce planning and recruiting efforts. The office is located in the Director's Office and focuses on recruitment, retention, and succession planning. The WPDO has developed a training calendar that includes six training programs/presentations with an additional three programs in the development stages. They have also successfully delivered two training programs with another 19 offerings scheduled through October 2009.

Finally, we need to do all we can to recognize the excellent work that goes on every day in our state organizations to advance the mission and goals that are our responsibilities. We need to take the time to celebrate the great work that our staff does.

**18. Which Health professions do you believe are the highest priority for the state to address regarding workforce shortages?**

Labor shortages can be reflected in increasing salaries, large numbers of vacancies, or an existing or predicted mismatch between the capacity to train new personnel and expected turnover in the profession. While the nursing shortage has been well-documented, current economic conditions have caused some hospitals to lay off nurses, and some newly trained registered nurses are experiencing difficulties finding employment. The President has spoken about a shortage of primary care physicians, but there is no universally-accepted definition of the primary care shortage. Certainly, the current trend of fewer medical students entering primary care specialties is a cause for concern. The 25 fastest-growing professions include ten allied health professions such as veterinary technologists and technicians, home health aides, pharmacy technicians, and dental hygienists. The top 25 occupations in terms of greatest job openings include two allied health professions: personal and home health aides and registered nurses. In one of the few comprehensive evaluations, the UC examined the demand for UC-trained health professions and found need for enrollment expansions in



medicine, pharmacy, public health, veterinary medicine, and nursing but not for dentistry or optometry.

Whether there is a shortage or adequate supply of professionals in any particular category, we also face an uneven distribution of that workforce. In much of rural California and in parts of many of our cities, Californians don't have access to the care they need. Nor do we have a workforce that is representative of the communities they serve.

**19. What activities has the department initiated to address workforce shortages in the health professions? How are you working with other departments to address this issue?**

While DHCS is not the lead department in the Administration's work in health manpower planning, we do have an important role to play. We are responsible for administering the state's responsibilities under the Federal J-1 Visa program that allows states to recommend up to 30 foreign medical graduates for waiver of the requirement to return to their home countries upon graduation if they practice in underserved areas. Medi-Cal funding plays an important role in supporting graduate medical education through our support for interns and residents in hospitals, particularly public and UC hospitals. These funds have been threatened by regulations that were issued by the federal government that limit Medi-Cal reimbursement for these activities. The regulations are subject to a moratorium under ARRA through June of this year. Medi-Cal also funds services by physician's assistants and nurse practitioners whose scope of practice was expanded in 2007 under AB 3 (Bass).

**20. What role, if any, do you believe the department has in getting children in K-12 education interested in science and health care careers?**

DHCS has not had a role in this aspect of developing the health workforce for the coming decades. While we could assist in helping to stimulate interest in health professions among students, I do not see DHCS as taking lead responsibility for this effort. However, we will work to help shape the workforce development efforts underway in other departments such as the Office of Statewide Health Planning and Development and the Labor and Workforce Development Agency.



Toby Douglas  
Proposed

Senate Confirmation Hearing  
Toby Douglas, Chief Deputy Director of health Care programs  
California Department of Health Care Services  
May 20, 2008

**Question #1:**

**Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as chief deputy of DHCS? How will you measure your success?**

Over the last decade, I have been committed to public service. I've worked directly with communities to implement new and innovative programs. I've assessed the impacts of national social and health policy reform efforts. Lastly, I've managed and implemented critical policy for local and statewide health delivery and financing systems, including Medi-Cal. Public service is my passion. It fires my commitment, dedication, drive, sense of purpose, belief in public integrity, and my great thirst for the challenge, and rewards of being an effective change agent.

My primary responsibility as Chief Deputy Director is to serve as the Medicaid Director for California and to ensure the delivery of publicly funded health care benefits to over 8 million people in the most appropriate and cost effective manner possible. We have done well, but I strongly believe that the Department's health care programs can do better. Through Medi-Cal and our other health care programs, we can be a major force in improving and preserving the health outcomes of Californians. Over the past two years I have worked with my colleagues at DHCS to develop a strategic plan to direct our actions as a purchaser and payer, ensuring that we properly fulfill this vital role. The strategic plan is a very clear reflection of my goals and what I hope to accomplish. I want to:

- Enhance the delivery and quality of health care services to Medi-Cal beneficiaries. We must develop systems of care that directly address the growing costs and health care needs of beneficiaries who incur the highest per capita expenditures. Success will be measured by our ability to implement and/or improve the efficiency and cost effectiveness of the systems of care for adults with disabilities and the California Children's Services Program.
- Ensure fiscal integrity by reducing fraud, abuse and waste in our health care programs. Even with our strong focus on preserving taxpayer dollars and tough prevention measures, the Department continues to encounter fraud, abuse and waste as a challenging issue in its administration of health care programs. Success will be measured by our ability to develop and implement effective processes and interventions that prevent and detect fraud, waste and abuse over time.



- Facilitate the efficient enrollment of individuals into our health care programs by ensuring that our eligibility and enrollment functions are accountable, simple and transparent. Success will be measured by our ability to provide clear policy guidance to counties, our use of technology to streamline the process, and the successful performance of our county partners.
- Minimize unnecessary administrative barriers by implementing provider friendly business processes. Success in this area will be measured by our implementation of new claims processing, provider enrollment and prior authorization systems that deliver more efficient state and provider operations.
- Maximize available federal funds to develop and sustain safety net care services that are more widely available throughout the state. Success in this area will be based on our ability to increase our federal funding through the renewal of a new Medicaid waiver.
- Play an essential role in advancing health care innovations. Success will be measured by our ability to implement system reforms as part of a new 1115 Medicaid Waiver; realign payment incentives by implementing pay for performance programs in Medi-Cal and advance the use of health information technology by our providers through use of federal stimulus funds.
- Advance opportunities for Medi-Cal beneficiaries to receive long-term care services in their homes and communities. Success in this area will be measured by our ability to provide more beneficiaries with the opportunity to transition from nursing facility settings to the community.
- Strengthen the Department's operations by developing a strong, dedicated workforce. Success will be measured by our ability to recruit, train and develop qualified staff.

#### **Question #2:**

**California's unemployment rate hit 10.5 percent in February 2009, its highest level since April 1983, and the unemployment rate has increased for 11 consecutive months. How has the recession affected the caseload of the Medi-Cal program?**

The Medi-Cal program serves as an essential safety net for Californians during times of economic crisis. Recently, we have experienced a growth trend in the caseload for Medi-Cal families and children of approximately 1 percent in FY 2007-08 and approximately 3 percent projected for FY 2008-09. The trend appears to be related to the worsening economy and unemployment. If the economy does not improve in the near future, this trend will continue through at least the end of the budget year (June 2010). We will continue to monitor enrollment trends, and we will work closely with our county partners at the California Welfare Director's Association (CWDA), to review

application intake information. In addition, we are attending meetings with CWDA to stay informed on what counties face on the front lines.

While Medi-Cal serves as an essential safety net it is not available for all low income uninsured Californians. This again highlights the need for comprehensive health care reform that includes wellness and prevention, coverage for all Californians and cost containment.

**Question # 3:**

**Do you have any plans to develop a proposal to enhance the delivery of services to Medi-Cal beneficiaries in FFS? If so, what do you feel would be the most important components of such a proposal.**

Enhancing the delivery of services to Medi-Cal beneficiaries in the fee-for-service (FFS) program is definitely one of my key goals. This has great potential to improve outcomes and reduce costs. We will be exploring the development of an enhanced system as we develop a new 1115 Medicaid waiver (see questions #10 and #11). This enhanced system, based on stakeholder input, could be an important component of the new waiver.

Over the past year, we have researched other states' efforts to enhance delivery systems for beneficiaries in their FFS systems. These programs are commonly referred to as enhanced primary care case management (EPCCM) programs. They aim to integrate elements of managed care into the FFS system without using capitated risk. Under this concept, enrollees have access to primary care providers (PCP) who serve as the enrollee's medical home to manage their care. Enrollees receive preventive treatment from the primary care providers, who oversee all aspects of care, including arranging for specialists and coordinating access to information and emergency treatment referrals.

We are very interested in developing a system that builds on the positive experiences of other states. I believe that key components of any new Medi-Cal system of care for persons with disabilities in the FFS programs will include the following interventions:

- Medical home. Beneficiaries must have access to a primary care provider who can arrange and coordinate their care across all elements of the complex health care system. There is growing evidence that a patient-centered medical home improves health outcomes and reduces disparities in access to care.
- Comprehensive care management. The program must provide comprehensive, coordinated care management including disease management, care coordination and/or medication management.
- Better integration of care management and medical home. Successful efforts to improve the care and outcomes of persons with disabilities include systems in



which there is a strong connection between the medical home provider and the care management system.

- Incentive based systems. Payment incentives should encourage providers to lower costs by improving outcomes through smarter better health care, and by working closely with care management organizations.
- Community oriented system. I believe an enhanced system of care for persons with disabilities must promote regional strengths by maximizing the use of local resources and provider organizations that understand the needs of the target population. This will require local stakeholder input and local involvement to actively engage beneficiaries through in-person interventions.
- Predictive modeling. Data analytics is essential to target current and future high cost users of health care. The modeling can allow for varied interventions to help target the greatest resources to those with the most need.
- Beneficiary and provider supports. An enhanced system of care must offer beneficiaries and providers with tools to ensure that the system is providing the right care at the right time in the right setting. This includes providing beneficiaries with access to a toll-free health advice line, self-management education materials, and offering providers access to training, education, and patient specific outcome data.

#### **Question #4**

**Specifically, what actions has the DHCS taken since this time to both expand the program geographically and increase existing mandatory enrollment?**

The Department is committed to expanding access to managed care as a method to preserve and improve the outcomes of Medi-Cal beneficiaries. We believe managed care offers the potential of a more effective, coordinated system of care for Medi-Cal beneficiaries, especially for those with complex chronic conditions. The Budget Act of 2005 authorized expansion of the Medi-Cal managed care program into 13 new counties: El Dorado, Imperial, Kings, Lake, Madera, Marin, Mendocino, Merced, Placer, San Benito, San Luis Obispo, Sonoma, and Ventura.

Since 2005, the Department has engaged counties and stakeholders to determine the most appropriate managed care system for these local communities. Based on health plan financial readiness and local input, we determined that four of the 13 counties (El Dorado, Imperial, Marin, and San Benito) were not ready or suitable for managed care expansion, primarily due to concerns about the availability of adequate provider networks. In addition, Placer County's expansion is currently on hold as potential health plans have been unable to participate due to financial difficulties and provider network constraints. For the remaining counties, the original expansion called for implementation of managed care using the Geographic



Managed Care (GMC) model and expanding existing County Organized Health Systems (COHS). However, in some instances (e.g., Merced, Fresno, Kings and Madera counties), the local stakeholders wanted a different model than proposed, and we have supported those requests.

- The Department successfully introduced managed care into San Luis Obispo in March 2008. Approximately 25,000 beneficiaries were successfully transitioned into the existing COHS health plan in Santa Barbara County, which has changed its name to CenCal to reflect this county expansion.
- In October 2009, the Department plans two COHS expansions: Sonoma will use the Partnership HealthPlan (PHP) and Merced will use Central Coast Alliance for Health (CAAH).
- In the spring of 2010, Lake and Mendocino will also join PHP.
- October 2010 is the proposed implementation date for the COHS in Ventura, and the Geographic Two-Plan model in Fresno, Kings and Madera.

The Department is committed to successfully implementing managed care in these counties and ensuring that target dates are achieved. We are actively working with health plans and counties, providing technical assistance, holding monthly teleconferences with county representatives to resolve implementation issues, and reviewing policies and procedures and other readiness deliverables.

In addition to the expansion efforts, DHCS is amending all managed care contracts effective July 1, 2009, to include the 250 percent of poverty level working disabled population which will be mandatory for COHS counties and voluntary for Two-Plan and GMC counties. This will add approximately 900 members to the COHS.

**Question # 5:**

**What actions has it taken to increase the voluntary enrollment of individuals who are aged, blind, and disabled? Has enrollment increased in both the voluntary and mandatory categories?**

I believe we need to do more to increase voluntary enrollment of seniors and persons with disabilities (SPDs) in managed care. We have to increase beneficiary awareness and understanding of managed care, as well as ensure health plan readiness to serve this population. We have contracted with the University of California, Berkeley (UCB) School of Public Health - Health Research for Action (HRA), to develop educational and outreach resources. We are also developing outreach materials and other tools to assist health plans in efforts to ensure that SPDs and members with special needs receive timely, appropriate care. As a result of a special arrangement for the closure of the Agnews Developmental Center, most of the former Agnews residents who were transitioned into the community in three Bay Area counties have been enrolled in

managed care. The following are some of the actions we have taken that illustrate our commitment to heightening awareness and understanding of managed care:

- Comprehensive guide. DHCS, through its contract with UCB, developed a comprehensive guide, "What Are My Medi-Cal Choices?" to assist SPDs in choosing between Medi-Cal fee-for-service and Medi-Cal managed care (MMC). We are proud to report that the guide won the 2008 Institute for Healthcare Advancement's outstanding achievement in health literacy award for published materials. More importantly, initial findings provide strong evidence that the guide is an effective way to improve beneficiaries' knowledge, confidence and intentions about making more informed Medi-Cal choices.
- Choice/Enrollment enhancements. We have attempted to make it easier for SPDs to make a choice by developing two new versions of the Medi-Cal choice form. We are also requesting that our Health Care Options enrollment broker use a training curriculum to assist personnel who work with SPDs to communicate more effectively.
- Informational flyers. We have developed a flyer about the benefits of the Medi-Cal managed care for SPDs. In June 2009, we will mail this flyer to approximately one million beneficiaries enrolled in fee-for-service in all Two-Plan and Geographic Managed Care Counties.

We also believe it is important to increase health plan readiness. We are incorporating recommendations from the California HealthCare Foundation (CHCF) that focus on the needs of SPDs as part of contract requirements. CHCF recommendations being incorporated include; training of health plan staff, representation on health plan committees and providing member material in alternate formats (i.e., Braille, large font, languages, etc.) These contract amendments took effect in the COHS counties as of January 1<sup>st</sup> and for the Two-Plan and GMC counties, contracts will be finalized this year. In addition, it is essential that plans have the tools to identify special needs for SPDs at the time of initial enrollment to ensure that they receive timely and appropriate care. To that end, DHCS, through its contract with UCB, is pilot testing a Health Information Form to identify members that have disabilities, chronic diseases and more complex medical problems or those who require expedited services. As more SPDs enroll in Medi-Cal managed care, this form will facilitate quicker and better communication between the plan, members and health care providers. We are also collaborating with plans to develop two tools for implementation in 2010; the Member Evaluation Tool to identify special needs and the Staying Healthy Assessment tool for post-enrollment assessment.

Total enrollments in managed care increased slightly from approximately 3.3 million to in 2005 to 3.4 million from 2005 to 2008. The increase was due primarily to mandatory enrollments. However, over this time period there was an increase in voluntary enrolments from 174,900 in 2005 to 241,993 in 2008, a 2 percent increase. Voluntary



enrollment now represents 7.2 percent of the total enrollment in managed care, compared to 5.3 percent in 2005.

**Question #6:**

**What role does DHCS have in ensuring the proper administration and billing of Medi-Cal services by other state departments? What actions have you taken, for example, to assist DMH in complying with federal law?**

As the Medicaid Director, I am responsible for administering the Medicaid (Medi-Cal) program, and conducting liaison activities with the federal Centers for Medicare and Medicaid Services (CMS). It is my responsibility to seek opportunities that reduce general fund impacts across all of our state department partners who administer Medi-Cal-associated health programs. Yet, as the Medicaid Director and the responsible and accountable individual for billing the federal government for federal financial participation (FFP), we must also ensure fiscal integrity and guarantee that only federally-eligible Medicaid costs are billed to the federal government.

We have longstanding procedures to ensure compliance with federal and state rules regarding the expenditure of federal Title XIX funds. These involve an active and coordinated relationship with our state partners, one which is grounded in solid, interagency agreements (IA) that ensure all of us provide services and invoice claims in compliance with federal Medicaid rules.

With the IA in place, our accounting, administrative support and program staff review all payment for services. This comprehensive review provides safeguards to determine that our state partners are following all state and federal requirements as outlined in the interagency agreement, and the state plan and/or waiver. In addition, the IA requires the other state departments to develop and maintain a fraud and abuse detection mechanism and to work with DHCS when fraud or abuses are noted. And, to ensure proper claiming, we use the IA to work collaboratively with other departments to provide quality assurance oversight. For example, we conduct reviews of waiver services within the Department of Developmental Services and the Department of Social Services to assess the operations and the quality of services provided to Medi-Cal beneficiaries, and to ensure they are properly claiming federal financial participation.

We are also actively engaged with the Department of Mental Health (DMH) to ensure that the services and administrative procedures associated with the Specialty Mental Health Services (SMHS) Waiver are in compliance with federal law. Over the past several years DHCS, as well as state and federal auditors, have identified the need for improvements in state compliance with Medicaid claiming for the SMHS waiver. We believe it is essential to strengthen our oversight, the quality of our joint claims processing system, and our collaboration with DMH to ensure the waiver complies with federal law and to ensure counties are paid timely. In coordination with DMH, we have undertaken the following actions:



- Develop a Medi-Cal State Plan Amendment (SPA) to provide a comprehensive description of the reimbursement methods under the SMHS waiver, including the current Certified Public Expenditure (CPE) methodology, interim payment, initial cost settlement, and final cost reconciliation processes. This is due to CMS by July 9.
- Develop a more timely and accurate process for the return of overpayments to CMS.
- Develop new cost-settlement and final cost-reconciliation procedures.
- Complete quarterly reconciliations of all Medi-Cal expenses under the SMHS waiver.
- Develop a new Short-Doyle Medi-Cal Phase II electronic claims processing system which will streamline claims processing, increase accuracy and timeliness and allow counties to query on-line the "real time" status of their claims.
- Develop more reliable and timely invoicing processes at DMH for the billing of FFP.

We are committed to working in partnership with DMH and the counties to continuously monitor and improve our processes and procedures to meet federal and state rules and facilitate timely reimbursement of county mental health plans.

#### **Question #7**

**How has the Department's strategy toward reducing fraud changed over the years? What mechanisms does the Department have in place to monitor, catch, and prevent fraud in the Medi-Cal program?**

DHCS has a strong focus and extensive infrastructure in place to ensure appropriate expenditures of public funds. But just like any other department, we do encounter fraud, abuse and waste as a challenging issue in the administration of health care programs. As fraud evolves, the Department increases its vigilance, and steps up our attack on inappropriate and unlawful activities. The Department must continue to develop processes and approaches to prevent errors and/or abuse, and to immediately uncover problems when they occur. Several years ago, the Department adopted the fraud control strategies advocated by Malcolm Sparrow of Harvard University. The strategy includes the prepayment review of claims; making every claim at risk for review; clear designation of fraud control responsibilities; commitment of routine systematic measurement; the adoption of a problem solving approach to fraud control; a deliberate focus on the early detection of newly emerging fraud trends; and resource allocation for controls based upon the assessment of the seriousness of the problem. Our anti-fraud strategy is proactive in identifying and reducing opportunities for providers to defraud the Medi-Cal program. As new patterns of fraud and abuse are identified, the Department quickly initiates a variety of sanctions and utilization controls to stop the fraudulent activity. The Department utilizes several effective tools to prevent fraud and abuse in the Medi-Cal program, such as:

- Random claims review (RCR). The RCR process is an important anti-fraud strategy we utilize that places Medi-Cal providers on notice that every claim is at risk for review prior to payment. Each week, 100 claims are randomly selected for pre-payment review.
- Field audit reviews (FAR). With the assistance of our Fiscal Intermediary, we are able to monitor payments to providers for evidence of abnormal changes, such as large payment increases over the previous week. The monitoring aids in facilitating on site reviews to uncover suspicious activity by providers, detect fraudulent schemes, and stop inappropriate payments quickly.
- Strengthening the provider enrollment / re-enrollment process. We have tightened the provider enrollment process through the adoption of new regulations and protocols, which help ensure that fraudulent providers are not enrolled or re-enrolled in the Medi-Cal program. All providers submitting enrollment applications are subject to a strenuous review prior to being admitted into the program. In addition, the Department has adopted a series of confidential risk factors that are used in evaluating the enrollment application submitted by the applicant. The re-enrollment requirement allows the Department to evaluate providers that may pose a risk for fraud and stimulates a thorough review of their application.
- Temporary suspension / withhold. Regrettably, it may be necessary to temporarily suspend providers from the Medi-Cal program or withhold payments to protect the Medi-Cal program. We take these actions if we learn that a provider is under criminal investigation by a law enforcement agency, or has been indicted or arrested for criminal activities or if there is a strong likelihood that a provider may have committed fraud. The payment withhold can lead providers to reform their billing practices and develop internal controls that improve the delivery of medical care and services to Medi-Cal beneficiaries.

#### **Question #8:**

**What are the outcome measures that DHCS tracks to evaluate whether or not its anti-fraud activities are effective?**

The Department utilizes two very effective measures that have proven to be valuable in assessing whether our anti-fraud activities are effective. Those measures are the Medi-Cal Payment Error Study (MPES) and the Status of Medi-Cal Fraud Control Initiatives approved in the 2003-2004 Budget (Legislative Report).

Since 2004, the Department has conducted the MPES on an annual basis. The MPES is a systematic study of program payment accuracy that assists the Department in determining where the Medi-Cal program is at greatest risk for payment errors. It provides an estimate of the potential dollar loss to the program, including the potential loss due to fraud, waste and abuse. Since 2004, there has been an annual decline in



the error rate for each study, demonstrating that the Department is going in the right direction in terms of fraud control.

The MPES has been of great assistance in identifying newly emerging fraud schemes or errors, and helps the Department ensure that our fiscal integrity activities are focused in the areas of highest risk for error. For example, in 2005 when the findings disclosed a significant number of errors in pharmacy claims, we conducted onsite reviews of pharmacies. The reviews verified compliance with applicable regulations and policy requirements, identified overpayments, uncovered new fraudulent scheme and abuse patterns and reduced claims errors. This outreach reduced the error rate among pharmacies in the next MPES study and illustrates how MPES serves as a valuable tool to refocus our efforts on ensuring fiscal integrity.

A second significant measure is the Legislative Report. In 2003, the Legislature approved the Department's request for additional funding and staffing to augment its anti-fraud program. In addition, the Legislature required that the Department make a semi-annual report on the results of anti-fraud activities and additional staffing.

We use the Legislative Report as an internal progress report of our efforts to combat Medi-Cal fraud and abuse, and to report the amount of savings and cost avoidance achieved. It ensures that we remain accountable to the legislature and ourselves in measuring our performance in preserving the program's fiscal integrity.

I believe that an important indicator of the Department's success fighting Medi-Cal fraud is supported by the results of the ongoing CMS compliance reviews. In March of this year, CMS' Program Integrity Unit conducted an oversight review of the Department to verify its compliance with federal anti-fraud requirements. During an exit interview with Department staff three weeks later, CMS identified areas of our anti-fraud program that they consider to be "best practices," including MPES, our work on the Adult Day Health Center monitoring, and our provider education program.

**Question #9:**

**The federal American Recovery and Reinvestment Act (ARRA) is estimated to provide California with at least \$10 billion by increasing the federal match rate for Medi-Cal. In order to receive these funds, ARRA places certain requirements on states. One of these requirements is the prompt payment of claims, which requires 90 percent of clean claims are paid within 30 days and that 99 percent of clean claims are within 90 days. Clean claims are claims, or bills for services provided, for which no further written information or substantiation is needed to make payment.**

**Is California currently meeting the prompt payment requirement in all aspects of its program? What actions are you taking to ensure that all AARA requirements will be met in order to receive the federal funds?**



The five maintenance of effort requirements DHCS must meet to draw down increased Federal Medical Assistance Percentage (FMAP) are a key component of the ARRA. The five conditions are:

1. The state must apply Medicaid eligibility standards, methodologies and procedures that are no more restrictive than those in effect under the State Plan (or any waiver or demonstration project) on July 1, 2008.
2. No amounts attributable (directly or indirectly) to such increased FMAP are deposited or credited to any reserve or rainy day fund of the state.
3. The state does not require political subdivisions to contribute a greater percentage of the non-federal share of such expenditures than the respective percentage that would have been required under the state Medicaid plan on September 30, 2008.
4. The expenditures for which the state draws funds must be eligible expenditures.
5. The state must remain in compliance with prompt payment standards, including for nursing homes and hospitals.

We have been in close communication with CMS to ensure that we are in compliance with the prompt payment requirements. We have determined that we do meet the requirements of ARRA governing enhanced FMAP rates for prompt payment of Medicaid claims. In addition, we are certain we will continue to comply with ARRA when we account for nursing homes and hospitals beginning June 1, 2009. DHCS also will meet the federal reporting requirements related to prompt payment and will provide quarterly compliance reports to CMS. In addition, we will separately draw down the increased FMAP funds, separately track them and separately report them to CMS. These reports will be available to the Legislature.

With the passage of SBX3 24, we are able to meet all five conditions to draw down the increased FMAP. DHCS issued an All County Welfare Directors Letter on March 27, 2009, and notified CMS that the state had reinstated former eligibility standards.

We have identified three additional changes that will go into effect July 1, 2009, that may cause the state to be out of compliance with the ARRA Maintenance of Effort (MOE) requirements. These include the SSI/SSP reduction, the IHSS buy-out reduction and the IHSS wage reduction. The Department has been working very closely with CMS to receive a final determination of compliance. CMS has informed the Department that the IHSS buy out reduction will not impact ARRA compliance. In addition, while CMS informed the Department that the SSI/SSP reduction will lead to non compliance, CMS has approved the Department's plan to ensure that no applicants or beneficiaries lose Medi-Cal eligibility due to the reduction. This implementation plan has been provided to all legislative staffers. Finally, CMS has determined that the state will be out of compliance with the ARRA on July 1 due to the IHSS wage reduction. The Department adamantly disagrees with this finding and the Governor has sent a letter to

Secretary Sebelius of the US Department of Health and Human Services to appeal this decision. This letter and our legal analysis have been provided to legislative staffers. Due to the urgency of this issue and the significant funding at stake, we will keep the Legislature regularly informed on the outcome of these discussions and the actions that the Department will take to ensure compliance by July 1, 2009.

In order for DHCS to draw retroactive increased FMAP for other departments, we have also directed those departments to submit revised invoices to DHCS to claim the additional amounts. We provided instructions for revising invoices, an example of a revised invoice and a listing of previously submitted invoices to each department. As the other departments submit revised invoices, DHCS will continue to expedite the review and the processing of the revised invoices. The other departments are now including increased FMAP as they submit their current invoices. To date DHCS has drawn over \$1.8 billion of increased FMAP.

#### **Question #10**

**What is your timeline for developing and submitting a waiver renewal package to the federal government?**

Currently, the state has a five-year Medi-Cal waiver focused on hospital financing. This waiver has significantly restructured the way California finances its public hospitals and public and private safety net hospitals. The waiver established the Safety Net Care Pool (SNCP) to cover costs that are not otherwise claimable under Medi-Cal. The \$766 million in federal funds claimed annually from the SNCP has been used to reimburse designated public hospitals and other public and private safety net providers for their costs of providing health care services to low-income uninsured persons. This includes \$180 million per year to reimburse ten counties for their Health Care Coverage Initiative programs designed to provide health care services to low-income uninsured persons.

This Medi-Cal waiver expires August 31, 2010. To ensure sufficient time for CMS review/approval, we must submit a concept paper to CMS no later than September 1, 2009. This will provide 12 months for negotiation between CMS and DHCS on the various components of the waiver concept, which is likely to be more comprehensive than the current waiver, which only focuses on hospital financing. We have several goals for a new waiver:

- Maximize federal funds.
- Support and strengthen the health care safety net.
- Improve health care outcomes for patients.
- Expand coverage.

We are in close coordination with staffers from all four leadership offices and will be working closely with the Legislature and stakeholders as we develop this new waiver and aim for a September 2009 submission date.



### **Question #11**

**What opportunities are there in the renewal for California to redesign its programs and receive additional federal funds?**

Under authority granted by Section 1115 of the Social Security Act, the federal government may provide states the option to transform their Medicaid programs by waiving federal Medicaid rules. By developing these system reforms, states can make a case to the federal government that doing so will reduce the overall growth of spending in Medicaid, subsequently receiving additional federal funds for costs of services that would not normally qualify as Medicaid expenditures under the Medicaid State Plan.

There are many opportunities for California to redesign our programs and receive additional federal funds. We believe that system reforms should focus on the objective of promoting better organization and management of care for those Medi-Cal beneficiaries with the highest ongoing level of health care needs of any of the groups served, and who account for the greatest investment of publicly financed health care dollars. Proposed system reforms should better organize care and create a more accountable system that creates a stronger relationship among the beneficiaries, providers and payers to ensure that the right care is provided at the right time in the right setting. This would improve health outcomes and maximize the use of health care expenditures.

Key reform elements will likely have an emphasis on:

- Improving the quality and efficiency of services provided to these populations through the use of primary care, prevention and wellness, and care coordination that will transform the systems of care for these subsets of Medi-Cal beneficiaries.
- Measuring health outcomes and provider performance.
- Enhancing the quality and safety of care by encouraging adoption of health information technology (HIT), such as electronic medical records and e-prescribing.
- Aligning incentives among the payers and providers.

Potential areas of the program the Department will assess the viability of including in an 1115 waiver include: better care coordination for persons with disabilities, including those within the specialty mental health system, CCS program and dual eligibles.

### **Question #12**

**Most of the counties' focus has been on creating medical homes for the uninsured and in coordinating the care they are receiving. What lessons can you draw from the counties' experiences that would be applicable to the larger Medi-Cal program?**



I believe a medical home should be a key component of enhanced delivery of services to Medi-Cal beneficiaries in FFS. The establishment of medical homes has been a significant aspect of the provision of health care services to the uninsured population covered under the Health Care Coverage Initiative (HCCI) program. It is therefore important that we look to these county HCCIs as potential models for developing a medical home program in our Medi-Cal FFS.

The primary objectives of the HCCI program's medical homes have been to:

1. Facilitate a systematic and patient-centered approach to address the patient's medical condition and needs and to facilitate information exchange crucial to maintaining well-informed medical evaluations and diagnoses.
2. Provide disease management services for patients with chronic diseases for the development of comprehensive, encompassing medical services plans that ensure complete and efficient medical care and treatments.
3. Educate patients on health awareness, health lifestyles and actions to achieve reductions in patient need for necessary medical care and on how to utilize the health care system.

A UCLA study team is investigating the extent to which the HCCI medical home objectives are being achieved. Recent reports from administrators of counties' HCCI Programs indicate that the HCCI medical homes are achieving expected outcomes: a better informed network of physicians and other health care providers, improved collaboration between providers, more informed medical evaluations, analyses and diagnoses, and a more encompassing understanding of the patient's medical needs.

To date, the data on medical homes, and the HCCI enrolled population itself, are too recent to allow for valid measurements of health outcomes. However, limited preliminary data reported from Orange County show that the HCCI program provides promising indications. Specifically, in the year prior to HCCI implementation approximately 115 emergency room visits per 1,000 individuals occurred. This number declined to 95 visits per 1,000 enrollees in the first year of program implementation. Similarly, the total number of inpatient days in the county went down from 137 days per 1,000 to 107 days per 1,000 enrollees. In contrast, the number of outpatient visits increased from 316 per 1,000 enrollees in the year prior to HCCI implementation to 347 per 1,000 enrollees in the first year of implementation.

The HCCI program data, while still preliminary, suggests that the use of medical homes in the uninsured population contributes to better and more efficient medical care for the patient. Therefore, it is very important that we continue to learn from the experience of the HCCI counties as we develop an enhanced delivery system for our Medi-Cal population. It also illustrates the importance of exploring ways to develop a system in a

way that builds upon local networks and interventions that have been successful in creating systems of care for similar populations with high disease burdens.

### Question #13

**Will CHIPRA require the state to change any of its current practices within the Medi-Cal program? Are there any opportunities presented by CHIPRA for the state to alter its Medi-Cal program to better serve children?**

CHIPRA makes significant changes that will require the state to change many of its current eligibility policies and thereby increase or streamline enrollment of eligible beneficiaries/children. We believe these changes will better serve children and families under Medi-Cal, reduce administrative costs and maximize federal funding while still preserving the fiscal integrity of the program. The following major changes will be initiated:

- Automatic enrollment of deemed infants - Section 113(b) of CHIPRA amended the automatic enrollment of children born to women receiving pregnancy-related assistance. This change requires a modification of the current practice of deeming infants and eliminates the requirement that the infant must reside with the mother. DHCS issued an All County Welfare Director's letter implementing the change in policy, effective April 1, 2009. The letter outlines interim measures for the counties to take until system modifications are in place for their automated eligibility systems.
- Legal immigrants – Section 214 of CHIPRA allows states to waive the five-year bar and claim FFP for full-scope services for legal immigrant children and pregnant women, effective April 1, 2009. California already provides full-scope coverage to this group, however, it only claims FFP for emergency and pregnancy related services. This change will result in a reduction of \$10 million in state general fund expenditures over the current year and budget year. The Department will submit a State Plan Amendment (SPA) to implement this option once state guidance and revised SPA pages are issued by CMS.
- Performance bonus payments – CHIPRA offers performance bonus payments for states that increase their Medicaid enrollment of low-income children above a specified threshold. Payments are available for federal fiscal years 2009-2013 if the state increases its enrollment above the baseline and implements at least five of eight specified outreach and enrollment activities. We believe California meets at least five of the eight specified outreach and enrollment practices and estimates that Medi-Cal will be entitled to a performance bonus totaling approximately \$1.3 million per year. We are awaiting further guidance from CMS on how to claim the bonus payments and more specificity on how the funds can be used.
- Citizen applicants – CHIPRA requires citizen applicants be given at least the same *reasonable opportunity period* to submit documents that are provided to non-citizens to submit immigration documents. Under the *Federal Deficit Reduction Act of 2005*,



citizen applicants for Medicaid were not permitted to receive full-scope benefits until their citizenship and identity had been verified. DHCS went through a very long and arduous process in collaboration with counties and stakeholders to minimize the negative impact of this new requirement on applicants, beneficiaries and counties. One of the major steps taken was development of a birth record match process that establishes citizenship for a majority of individuals born in California. The new CHIPRA requirement will now allow citizen applicants to begin receiving full-scope Medi-Cal benefits while they obtain their citizenship documentation. The requirement is retroactively effective to when the DRA citizenship requirements began. This change will allow citizens to receive access to care in a more timely manner and particularly impact residents who were not born in California.

- SSN validation option – In addition, CHIPRA also allows states an option to adopt a Social Security Number verification process with the Social Security Administration which would substantially eliminate the documentation requirements for applicants and eliminate the majority of paperwork counties must process associated with verification of citizenship and identity. It appears that implementation of this provision, which is effective January 2010, will reduce administrative costs to the program and fundamentally streamline the application process for applicants and beneficiaries by eliminating these documentation requirements. We will be addressing this option as part of the May Revision.



**Michael R. Wilkening - Responses to Rules Committee Questions for  
Confirmation on May 20, 2009**

**Role of the Agency**

The California Health and Human Services (CHHS) Agency administers the state's health and human services programs. The agency oversees the following departments: Aging, Alcohol and Drug Programs, Developmental Services, Child Support Services, Community Services and Development, Health Care Services, Mental Health, Public Health, Rehabilitation, Social Services, the Emergency Medical Services Authority, the Office of Statewide Health Planning and Development, the Managed Risk Medical Insurance Board, the Office of Systems Integration, and the Office of Health Information Integrity.

**Goals**

***1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as undersecretary of the Health and Human Services Agency?***

The Health and Human Services Agency is guided by five primary goals:

- Every child will live in a safe, stable, permanent home, nurtured by healthy families and strong communities.
- Every Californian will have access to high quality, affordable health care coverage.
- Support the Healthy California and California Obesity Prevention Plan strategies to develop healthier eating and active living communities, resulting in healthier people in healthy places.
- Disabled and aged Californians will have the opportunity to live in their own homes and communities, rather than institutional settings, in the most integrated setting possible.
- California will be maximally prepared to prevent and respond to natural or intentional disasters, including acts of terrorism.

As Undersecretary for Program and Fiscal Affairs, I supervise a team of Assistant Secretaries who interact on a daily basis with the 12 departments and one board within the Agency. Part of my job is to provide guidance to this team of Assistant Secretaries, and the five primary goals help to focus the efforts of Agency and the departments. This is especially important as the State's fiscal situation not only makes it difficult to obtain additional resources for new activities but also necessitates prioritizing the State's investment in existing programs as we reduce expenditures to live within the resources available. My background at the Department of Finance assists me in viewing the overall fiscal context and finding ways to continue moving forward in achieving these goals in these challenging fiscal times.

**Senate Rules Committee**

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**Appointments**

One of the difficulties facing departments is high turnover and retirement of seasoned staff. This trend has been especially troubling in the Budget and Estimate shops of the CHHS departments. Recruiting and retaining these staff is critical to having the information necessary to make informed decisions in pursuit of the goals articulated above. I have convened a group of Chief Deputies to assist me in developing proposals to curb the turnover in these areas and improve recruitment efforts. I expect that this effort, coupled with the already successful management and supervisory academies will assist Agency and its departments in these efforts.

***2. What do you view as the role and responsibility of the agency in the administration of health and human services programs?***

Agency serves a leadership role with the departments by articulating a vision and marshalling resources to move towards achieving that vision. Agency coordinates departmental activities, mediates disputes, and assists in prioritizing activities. As Undersecretary for Program and Fiscal Affairs, I serve as a primary liaison between Cabinet and the CHHS departments. I chair a group comprised of the Chief Deputies that meets at least monthly. This group serves as a forum to raise issues that cross departments and is a venue for developing overarching approaches to solving common problems. These activities are necessary to ensure that we are providing needed services in the most efficient and economical manner possible.

**Budget Crisis**

Due to the state's fiscal situation, the budget act included various reductions to health and human services programs. Current law requires the Department of Developmental Services to present a plan (using a process to include stakeholders) to the Legislature by April 1, 2009, to achieve savings of up to \$100 million for the 2009—10 fiscal year.

The budget crisis has also impacted state staffing. The Department of Mental Health employs workers at state mental hospitals, and the Department of Developmental Services employs workers at state developmental centers. In July 2008 the Governor issued an executive order which mandates state agencies to implement a hiring freeze, eliminate overtime, terminate all temporary employees, and suspend all personal services contracts. In December 2008 the Governor issued an executive order which instructs agencies to adopt a plan to furlough state employees and supervisors.

***3. What do you believe are the biggest cost drivers in the major health and human services programs? Based on these trends, in what ways can the state effectively manage the growth in costs while still delivering high quality services?***



The biggest cost drivers in the major health and human services programs over the past ten years have been caseload, service utilization, policy changes, and, for certain programs, increases in provider rates, wages and benefit levels. Average annual caseload growth in health and human services programs has historically exceeded annual population growth due in part to California's aging population, a trend which is expected to continue into the immediate future. This aging population also has needs for health and social services that exceed the median needs of the overall population, meaning that the costs of continuing to provide the same level of services and supports to similarly situated people will continue to increase faster than overall inflation rates.

There are a number of strategies available to policymakers to manage the growth in costs while still delivering high quality services. Aside from controlling the growth in new spending, other options address the costs of serving the population already enrolled in our programs. This could be done by increasing the use of individualized case management and making better or more informed health care decisions by establishing and maintaining a comprehensive "medical home" for each individual that is accessible in a timely manner to health care providers and their patients. Expanding the use of information technology, health information exchange systems, and telemedicine where appropriate, can facilitate improved communication and coordination and record-keeping, eliminate redundancy in medical tests, and improve access to care in underserved areas.

Strategic investments in planning to better anticipate, identify, and respond to various health and human situations can save future time and resources when they are most needed. Communication regarding best practices and lessons learned, and research into new tools to achieve better results (or even the same results at lower cost), similarly can improve the knowledge and capabilities of our health and social services sectors. Reducing the costs of what we do now, and increasing the efficiency with which we deliver increasingly effective services, are the keys to controlling cost increases while continuing to protect and improve the high quality of services that our citizens pay for, expect, and deserve. As the economy and fiscal situation improves, these strategic investments should be a priority.

***4. How do you weigh the benefits of proposed budget policies that result in short-term savings if they are likely to lead to greater, long-term costs for the state?***

For several years now, the State has attempted to address a structural fiscal imbalance that has resulted in expenditure levels that exceed annual revenues. California's recently enacted budget solutions reduce or defer expenditures, increase revenues, borrow and loan against other fund resources, and eliminate or limit growth in discretionary programs.



This year, the State was forced to delay payments for many programs for several months due to a lack of cash. This lack of cash, coupled with the inability to access capital markets, also caused thousands of capital outlay projects for California's infrastructure (roads, water, and parks) to be suspended. Although the need to defer expenditures for cash management purposes has been alleviated at the moment by California's April tax receipts, these revenues were again below expectations. On a purely cash basis, therefore, California continues to have a problem that must be addressed.

On a budgetary basis, as estimated by the Legislative Analyst's Office (LAO), California will still face a budgetary deficit of over \$8 billion through the end of 2009-10. That estimate is based on the assumption that all of the budget-related ballot measures contained in the February 2009 budget agreement are approved by the voters on May 19, 2009.

California must address its budgetary and cash problems. Optimally, short-term budget solutions should address the state's structural fiscal imbalance between expenditures and revenues. Doing so will not only solve immediate problems, but also mitigate future problems as well. Given the size of the problem, all options for bridging the gap must be considered. Some of these solutions, such as deferring or delaying expenditures into future years may result in greater costs in the long-term. These options must be considered to avoid drastic near-term impacts to the vulnerable Californians that our critical health and human services programs serve, support, and protect at a time when they most need our assistance.

***5. In your review of departments' budget proposals, what criteria do you use to prioritize the proposals?***

Given the State's fiscal challenges and increasing demand for services, prioritization of departmental requests becomes even more important and difficult. Agency plays a key role in sorting through departmental requests and determining which are critical. All budget proposals are evaluated both in terms of the programmatic needs as well as alignment with the policy goals of the Administration. Within this framework, issues that will be a priority are those that: (1) address critical health or safety issues, (2) comply with state or federal mandates, or legal actions, where there is no other recourse, or (3) support critical needs, based upon changes in workload or program demands. Within this context, Agency also assists departments in tailoring requests to build upon existing structures and programs to the extent possible to avoid duplication of efforts and maximize the utilization of resources.

***6. What are the biggest challenges faced by mental hospitals and developmental centers in complying with the Governor's executive orders regarding state staffing? How are you addressing these challenges?***

The biggest challenges faced by state hospitals and developmental centers (DCs) in complying with the Governor's executive orders regarding state staff are balancing safety and security for the public, patients/consumers and staff with compliance with the orders and increased costs associated when shift coverage is required. In an effort to ensure all care and services continued as needed, and to assist 24-hour facilities, the state hospitals and DCs were allowed to implement the furlough program with maximal flexibility and in a manner that recognized the inability to close these facilities. These alternatives to the shut-down of State government in general were afforded to very few departments.

Employees at the state hospitals and DCs were not exempted from the furlough. Instead, the alternatives allowed staff providing care and treatment to bank their furlough days for use within two years of the end of the furlough program. Other staff were required to use their furlough days within the month they were accrued. Both options provided more flexibility than the shut-down would have provided. Supervisors and managers were given maximum flexibility to ensure needed services continued to be provided while maintaining safety and security.

### **Coordination with Other Agencies—Public Health**

An important function of an agency is to improve the coordination of services among state departments, both within and outside of the agency's jurisdiction. In comments to the California Air Resources Board regarding the California Global Warming Solutions Act of 2006 Draft Scoping Plan (created by AB 32 (Nunez), Chapter 488, Statutes of 2006), the California Conference of Local Health Officers raised concerns that the Department of Public Health and local health departments were not formally or systematically involved in the drafting of the scoping plan, even though AB 32 explicitly requires an evaluation of the full range of public health impacts.

#### ***7. How does the agency ensure that departments outside its jurisdiction appropriately and actively seek guidance from your departments?***

Departments within the CHHS Agency are actively engaged in coordinating and collaborating with departments outside of the Agency in many ways; these multiple engagements allow the department to build trust and communication channels with other departments, so that as issues arise that might benefit from guidance from within CHHS departments, we have the relationships, awareness, and knowledge of issues of shared concern that encourage outside departments to seek guidance. Additionally, staff actively pursue discussion with other departments when they become aware of issues that might benefit from our guidance. Examples of these collaborative efforts include:

- CHHS has taken a leadership role in ensuring an appropriate response from CHHS departments and departments outside the Agency to the H1N1 flu outbreak



- the development of Farm Bill recommendations by the California Department of Food and Agriculture (CDFA) in close collaboration with CDPH, Department of Education (CDE), and California Department of Social Services (CDSS);
- current work by CDSS and CDPH with DOE to develop joint recommendations on the Child Nutrition Reauthorization Act;

As an Undersecretary, I meet and converse regularly with my counterparts in other Agencies. These communications allow us to coordinate efforts and ensure that input and advice is being provided from departments that are outside our immediate Agency. As issues are raised by my counterparts, I involve CHHS departments in the resolution of issues. In addition, if a CHHS department feels that it should be involved in a policy discussion, my role is to facilitate the department participation in policy development with other departments and agencies.

***8. What efforts has the agency made to encourage and ensure that its departments work with other state agencies in identifying potential risks to public health and taking steps to prevent harmful episodes?***

Agency staff are in constant contact with other state agencies whenever issues arise in which there is potentially a role for CHHS departments. For example, Agency staff participate in Strategic Growth Council (SGC) meetings. As issues come up that have potential relationship to health, CDPH staff are brought in to SGC staff meetings to participate, and CDPH staff have been encouraged by Agency to attend SGC meetings. Agency also has had numerous discussions with CDPH senior leadership about the value of pursuing a Health in All Policies approach, which provides a framework for addressing the potential health benefits or adverse health consequences of different policy options.

We do understand that individuals make daily choices in the context of their environments, and that one of the most important roles of CHHS is to promote social and economic environments that make it easier for people to make healthy choices. We can only do this through building strong partnerships with other agencies in government and in communities, and we are actively working to do that.

**State Relationship with Locally Operated Programs**

Many programs administered by the agency's departments are operated by local entities. For example, county welfare departments carry out the day-to-day operations of CalWORKs, In-Home Supportive Services, and Child Welfare Services. Also, the Department of Developmental Services contracts with



regional centers for the coordination of services and ensures regional centers' compliance with federal and state law and regulations.

***9. What do you view as the primary role and responsibility of the state in administering the programs that are operated by local agencies? How do you ensure that the experiences of these local agencies are incorporated into policy and budget changes and these agencies receive clear and consistent direction from the state?***

The primary role and responsibility of the state in administering the programs operated by local agencies is to provide effective leadership and guidance while ensuring smooth and efficient operation of the programs administered by the local agencies. The roles and responsibilities of the state relative to the numerous state programs administered at the local level are contingent upon statutory authority or mandate of the applicable governing law. Specifically, departments provide oversight and state level management of locally delivered programs by:

- Providing leadership in the development of policies, specific programs, and program components to accomplish the established goals and objectives of the departments.
- Identification and projection of the demand for, and cost of, services provided by programs that are operated by local agencies.
- Ensuring equitable and timely distribution of funds and other resources to local agencies to enable them to provide services.
- Providing accurate accounting for the expenditure of public funds provided for programs operated by local agencies to include monitoring of compliance with rules, regulations, and statutes.
- Reviewing programmatic and financial data to identify drivers of successful outcomes and cost efficiencies.

Departments are responsible for ensuring compliance with state and federal laws in a timely manner, while also ensuring local agencies have adequate time to plan, modify their business operations and train staff in the application of complex program requirements. In addition, departments must monitor the impact of new requirements on clients to identify the need for clarification or modification of policies that would ensure equitable and consistent application of program requirements. This is done by monitoring individual county performance, while providing assistance and support where needed, and highlighting best practices across the vast array of programs delivered by the state's health and human services system.

Departments must also provide the local agencies with the right mix of tools to enable them to perform effectively and serve our clients in a timely manner. This

requires on-going collaboration with the counties who we view as our partners in administration of government programs. In addition to comprehensive guidance in the form of All County Letters, procedure guides, website updates and specific Question and Answer material is developed for dissemination to local programs/counties. Clear and consistent communication with local agencies is fostered by:

- Outreach to ensure broad participation in the process for developing and communicating department policy to stakeholders.
- Maintaining clearly identified and easily accessed points of contact for critical issues and processes.
- Ensuring access to information and data through regular posting of information to the websites.

Departments ensure that the experiences of these local agencies are incorporated into policy and budget changes and these agencies receive clear and consistent direction from the state by meeting with the local agencies on a regular basis, scheduling quarterly meetings that include stakeholders and consumer advocates and providing feedback on the issues addressed at the meetings. It is important that counties are included as partners regarding changes made to the programs they administer, not just to inform them, but also to take advantage of their "front line" experience as part of the development process for the program changes they have to implement. Continuing participation and collaboration among stakeholders avoids the making of policy choices in isolation.

For example, in the California Work Opportunity and Responsibility to Kids (CalWORKs) Program, CDSS provides programmatic oversight by providing county welfare departments with the information and instructions needed to correctly operate the program, as well as providing appropriate and available assistance to resolve issues that would have an impact on the ability to properly administer the program. Via a regulatory framework that ensures consistent treatment of CalWORKs recipients, CDSS seeks to maintain local flexibility and support in providing services. All County Letters (ACLs) and All County Information Notices (ACIN) make certain that local agencies receive clarification of program rules as well as instruction on programmatic changes. CDSS provides ongoing technical assistance to counties through a process where county welfare departments submit Policy Interpretation (PI) requests to CDSS for clarification of CalWORKs program rules, and also through open dialogue between county and state staff.

To further assist counties, CDSS also organizes the annual CalWORKs Partnerships Summit which brings together CalWORKs front-line practitioners, teachers, counselors, administrators, supervisors, managers, and business leaders to provide training and share proven practices and research-based strategies that improve productivity to better serve CalWORKs clients. CDSS



has a Memorandum of Understanding with the California State University Sacramento Office of Education Conference Planners to plan the CalWORKs Partnership Summit. The planning committee consists of representatives from various departments including Department of Mental Health, California Community Colleges, Chancellor's Office, California Department of Alcohol and Drug Programs, and the California Department of Rehabilitation. In September of 2008, CDSS held a California Counties Technical Assistance Academy to explore new, innovative programmatic strategies for engaging CalWORKs clients and effectively linking them with the critical supports and opportunities they need to achieve self-sufficiency; and at the same time, strengthen the state's capacity to achieve higher work participation rates. The Academy was held in partnership with the U.S. Administration for Children and Families, Office of Family Assistance and brought together a cross-section of nationally recognized experts, along with federal, state and county representation. Several of the counties that attended are being supported in ongoing pilot projects.

***10. How does the agency ensure that departments are appropriately monitoring the performance of these local agencies? How do departments work with their local agencies to address performance issues, especially given the severe budget constraints that local agencies are facing?***

As Undersecretary, I oversee the Office of Program and Fiscal Affairs. The Assistant Secretaries who report to me are responsible for the various CHHS departments. As many of CHHS' programs are administered by local agencies, the success of the programs is contingent on how these local agencies are performing. The Assistant Secretaries discuss program performance with departmental staff, attend and conduct meetings and briefings related to program performance, and review reports and literature related to program performance.

Departments employ a variety of approaches to address performance issues, ranging from the provision of technical assistance to providing "best practice" information to the development of corrective action plans. These activities are often informed by input from local agencies, stakeholders and the Legislature. A significant function for the Agency is to insure input and guidance from all parties at the front end to develop the best measures and as much consensus as possible at the front end. For instance:

- CDSS has established a County Peer Review process whereby representatives from CDSS and peer counties review a county's program, and provide input and technical assistance to help the host county improve performance and allow other counties to improve their programs.
- In the Food Stamp Program, CDSS conducts federally-mandated on-site Management Evaluation reviews in the counties to ensure that the program is being administered in accordance with federal requirements. As a result of the ME reviews or other information sources, any discovered



noncompliance is addressed in the form of a corrective action plan developed by the county and approved by the State. In the course of development of correction action plans, information may be provided regarding "best practices" as a way not only to correct the problems at hand, but also to provide a more efficient and effective operation that could result in savings to the county and as a way to maximize available resources.

- In the Medi-Cal program, DHCS convenes annual county summits to discuss the results of Medi-Cal Eligibility Quality Control reviews, trends and to promote and share best practices to better assist counties in their performance.

### **Medicaid Funding Oversight**

Federal law requires states to identify a single state agency for the state's Medicaid program. In California, the Department of Health Care Services (DHCS) is the single state agency for its Medicaid program—Medi-Cal. Federal Medicaid funds also support numerous state services not provided by DHCS, including mental health, drug treatment, and services provided to foster care children and persons with developmental disabilities. This requires DHCS to work closely with the other health and human services departments. In 2008 the federal government released two audits on Medi-Cal mental health services where it found a lack of fiscal controls, overpayments, and lack of coordination between DHCS and the Department of Mental Health. There are three additional federal audits of the Medi-Cal program currently underway. The federal American Recovery and Reinvestment Act (ARRA) is estimated to provide California with at least \$10 billion by increasing the federal match rate for Medi-Cal. In order to receive these funds, ARRA places certain requirements on states.

#### ***11. How do you assist DHCS in managing the Medi-Cal program with the other health and human services departments? What role does the agency have in ensuring the proper administration and billing of Medi-Cal services by state departments through DHCS?***

The CHHS Agency provides leadership and oversight for efforts to promote services and activities impacting the lives of many California residents' for essential health and human services through the Medi-Cal program. CHHS works in partnership with the departments it oversees to manage and control costs and implement policies. CHHS facilitates workgroups and communications between the various departments. These workgroups often include stakeholders as evidenced in the most recent establishment of a workgroup between the DHCS, Department of Mental Health and the California Mental Health Directors Association to address payment issues.

In some instances, Agency provides a leadership role from the inception of an issue due to the large programmatic or fiscal implications spanning multiple departments. This type of situation is exemplified by Agency's involvement in the implementation of the American Recovery and Reinvestment Act of 2009. Agency is in constant contact with the various departments to ensure that California receives as much funding as possible and utilizes it in an effective and responsible manner.

In other instances, departments engage Agency to assist in resolving issues that span departments. For instance, Agency will facilitate resolution to issues that arise between DHCS as the single state Medicaid agency and the other departments responsible for operating the Medi-Cal program receiving federal funding. This is particularly critical in addressing federal audit findings, where cooperation between the departments is essential to remedy deficiencies and prevent the loss or deferral of federal financial participation.

***12. How is the agency working with state departments to ensure California meets ARRA requirements related to receipt of the Medicaid funding?***

The American Recovery and Reinvestment Act of 2009 (ARRA) provides increased Federal Medical Assistance Percentage (FMAP) for 27 months between October 1, 2008 and December 31, 2010. The increased FMAP applies to Medical Assistance only (Benefits) and not to Administration. The increased FMAP rate includes a base increase of 6.2% plus an additional adjustment of 5.39% based upon change in unemployment. California current increased FMAP rate is 11.59%. The increased FMAP is a separate federal grant from the normal federal grant and these funds are drawn down separately, tracked separately, and reported to CMS separately.

The State must attest to meeting five conditions in drawing down the increased FMAP. Those five conditions are:

1. The State is applying Medicaid eligibility standards, methodologies, and procedures that are no more restrictive than those in effect under the State Plan (or any waiver or demonstration project) on July 1, 2008. If the State is currently ineligible because it does not meet this condition, the State may be retroactively eligible if it reinstates the former standards, methodologies, and procedures prior to July 1, 2009. (Section 5001(f)(1) of ARRA)
2. No amounts attributable (directly or indirectly) to such increased FMAP are deposited or credited to any reserve or rainy day fund of the State. (Section 5001(f)(3) of ARRA)
3. The State does not require political subdivisions within the State to contribute a greater percentage of the non-Federal share of such expenditures than the respective percentage that would have been required under the State Medicaid plan on September 30, 2008. (Section 5001(g)(2) of ARRA)



4. The expenditures for which the State draws funds must be eligible expenditures. (Section 5001(e) of ARRA)
5. The expenditures for which the State draws funds are not payments for health care practitioner claims or certain nursing homes and hospital claims that were received by the State during periods in which the State is not in compliance with the prompt payment standards. (Section 5001(f)(2) of ARRA)

With passage of SBX3 24 and the subsequent issuance on March 27, 2009 of an All County Welfare Directors Letter and notification to CMS that State had reinstated former eligibility standards, the State then met all five conditions to draw down the increased FMAP. However, three of the solutions for the Budget Act of 2009 potentially violate the conditions for drawing down enhanced FMAP – (1) SSI/SSP 2.3 percent grant reduction, (2) Changing the In-Home Supportive Services (IHSS) Share-of-Cost program, and (3) Reducing the maximum hourly rate the State will participate in for IHSS worker wages.

Once these potential issues were identified, Agency worked with the Department of Health Care Services and the Department of Social Services to evaluate the potential problem. Agency worked with these departments to explain to the federal government why these reductions do not violate the ARRA conditions and to better understand the concerns of stakeholders. As part of this effort, Agency initiated several meetings with the departments to understand the programmatic intricacies and insure compliance with federal requirements. Agency also has helped to facilitate the briefing of others, including Legislative staff and stakeholders.

### **Child Welfare Council**

AB 2216 (Bass), Chapter 384, Statutes of 2006, created the Child Welfare Council (CWC) and established it in the CHHS Agency. The council is an advisory body responsible for improving collaboration between, and the processes of, the multiple agencies serving children and youth in the child welfare and foster care systems. The council has met several times and established committees to develop goals and objectives. The council is required to issue an annual report, but no report has been issued. AB 2216 also requires the agency to ensure that current federal- and state-level child welfare services outcome measures are posted on the Department of Social Services' (DSS) Web site, but this has not been accomplished.

### ***13. In what specific ways has the council improved the collaboration between and processes of the agencies involved?***

The mission of the CWC, adopted in June of 2008 is to provide an effective, collaborative forum for the three branches of government, foster youth and their families, and key stakeholders to advocate for effective and promising strategies



and adequate resources to improve outcomes for children, youth and families involved with or at risk of involvement in the child welfare system.

Chaired by Secretary Belshé and Associate Supreme Court Justice Carlos Moreno, the CWC is comprised of 53 members representing multiple levels of state and local government. The CWC includes directors of five departments of Health and Human Services (ADP, DMH, DSS, DHCS, DDS); directors of county child welfare and social service systems; representation from the California Department of Education; the California Community Colleges, current and former child and family court judges; state advocates; parent partners; probation and juvenile justice representatives; current social and adoption workers; and current and former foster youth, who have the direct experience of the system. This vertical integration of individuals sets the stage for new opportunities to assess, change and improve the state process and to increase collaboration for children in the state foster care system.

The first set of recommendations will be presented to the CWC at the June 18<sup>th</sup> meeting in Sacramento. Each of the four committees created by the council has focused on issues that require collaboration and/or improve processes at the state and/or local level. Each committee is comprised of CWC members, department and agency leadership, and other stakeholders with issue specific knowledge. Committees have been encouraged to invite other individuals, including other state departments, local providers and advocates. This encourages participation and provides additional viewpoints and resources that encourage collaboration and assists in identifying areas for change and improvement in the current child welfare system.

Some specific examples of collaboration from the committees include:

- The Data Linkage and Information Sharing committee has drafted a policy that emphasizes the importance of data sharing, with strong respect for confidentiality, in order to best serve the foster care community. This policy, which will be shared with the state and county agencies and departments who work with child welfare, will establish a platform that will address providers' reluctance to share data on the state's foster children. The committee has requested the approval of the policy statement by the full CWC in order to create buy-in and increased data linkages. This committee also engaged UC Davis to conduct research to identify and inventory the data integration and information sharing barriers that exist, or are perceived to exist, between each of the agencies and/or departments that are represented by the CWC.
- The Prevention/Early Intervention Committee has chosen to assist counties with recommendations implementing a more robust differential response program. Depending on the individual case, differential response relies on an integrated community response which may include referrals to alcohol and drug programs, mental health services, faith based providers,

and community providers involved with children or families at risk of entering the child welfare system. In order to craft the most beneficial recommendation the committee, along with the County Welfare Directors Association, the Prevention/Early Intervention Committee engaged Casey Family Programs to survey all counties to assess the degree which differential response had been implemented. Through this process, the Committee has established a baseline to help craft future recommendations that will help counties to implement differential response more consistently with the goal of improving outcomes.

- The Permanency Committee participated with the Department of Alcohol and Drug Programs, the Administrative Office of the Courts and the Department of Social Services in obtaining a technical assistance grant from the National Center on Substance Abuse and Child Welfare. This technical assistance will be used primarily for county engagement, educating county partners, and to assist the State in promulgating a California-specific model of dependency drug courts to that would include a prescribed set of core components that would be adaptable to small/large/urban/rural counties.
- The Child Development/Successful Youth Transitions Committee has focused its efforts on transition age youth who will be aging out of the foster care system. The draft recommendations bring together the state's Workforce Investment Board, the California Department of Education, CHHS, Community Colleges, and other postsecondary education cites to craft a statewide policy that would support successful transitions age youth, including the support of the extension of foster care benefits to age 21.

The CWC has increased dialogue (both between state departments and with other stakeholders), promoted the exchange of ideas, along with identifying opportunities and barriers.

***14. How is the agency measuring whether the council's efforts to improve collaboration and processes are successful in terms of impacts to children's lives?***

The Child Welfare Council has improved collaboration between state departments and stakeholders by providing a common forum for discussing issues that impact the lives of foster children. However, the CWC will rely on the counties and the child welfare community to implement the recommendations developed by the CWC. In addition, the CWC has worked closely with the CDSS to ensure that the work plans and upcoming recommendations are in line with the Child and Family Services Review Program Improvement Plan which provides a vehicle to measure ongoing improvement in the child welfare system.



**15. What is your timeline for posting the federal- and state-level child welfare services outcome measures on the DSS Web site?**

The federal and state child welfare services outcome measures from the Child and Family Services Review Program Improvement Plan are currently available on the Department of Social Services website.

<http://www.childsworld.ca.gov/PG1520.htm>.

**Health Information Technology**

In December 2008 the state Health Information Technology (HIT) Financing Advisory Commission submitted a report to the agency containing near-term and long-term priority recommendations for how the state could address the capital impediments to the adoption and implementation of HIT in various health care sectors.

Earlier this year, the federal government enacted the Health Information Technology for Economic and Clinical Health (HITECH) Act (a component of ARRA), which authorizes funding for HIT. The majority of the funding is expected to be distributed as adoption incentives through Medicare and Medicaid to qualified healthcare providers who adopt and use electronic health records in accordance with the act's requirements. The remaining funds are for infrastructure outlays through grants, loans, and demonstration programs.

**16. What efforts has the agency undertaken to begin coordination and implementation of the HITECH Act in California?**

The Agency is coordinating California's response and application for the federal State Planning and Implementation Grant program that is part of the HITECH provisions of the America Recovery and Reinvestment Act (ARRA), and tracking the expected release of requirements for State Planning and Implementation grants for HIT.

The Department of Health Care Services (DHCS) is engaged with the Center for Medicare and Medicaid Services (CMS) on the state's planning and implementation of the Medicaid incentive program as outlined in the HITECH Act. This involves detailed planning for the administration of a program that involves designing metrics for measuring quality of care and mechanisms for monitoring and reporting.

The Governor's appointment of Jonah Frohlich as the new Deputy Secretary of Health Information Technology (HIT) was announced on April 17, 2009. Deputy Secretary Frohlich is leading the administration's effort to develop and implement California's health information roadmap for the expansion of health information technology and exchange. The roadmap will form the basis for California's



proposal to receive implementation grants from the Office of the National Coordinator.

***17. What steps has the agency taken to actively engage with federal officials and policymakers to ensure that California can effectively weigh in during federal implementation?***

California will have a strong voice in the development of national HIT policy. The administration has appointed a Health Information Exchange Advisory Board composed of distinguished industry and consumer representatives to oversee the development of California's strategic plan for health information exchange (HIE). Three members of our advisory committee were also recently appointed to the National HIT Policy Committee. They are:

1. Dr. Paul Tang, M.D., Vice President and Chief Medical Officer, Palo Alto Medical Foundation,
2. Dr. Charles Kennedy M.D. Vice President, Health Information Technology, Wellpoint, and
3. Dr. David Lansky, Ph.D. President and CEO, Pacific Business Group on Health

Therefore, California will be in an excellent position to provide input into national HIT policy. Additionally, our departments and offices will continue to work closely with their corresponding federal counterparts on areas such as privacy and security regulations, Medicaid incentive payments, etc., as those federal agencies develop their policies. For example, as part of the federal Health Information Privacy and Security Collaboration Project (HISPC), the California Office of Health Information Integrity worked closely with the Office of the National Coordinator on privacy and security issues related to electronic exchange of health information. And, DHCS is already engaged with CMS on the development of criteria for Medi-Cal incentive payments that are scheduled to begin in 2011.

***18. In light of the new federal act, how do you plan to reconcile the recommendations of the HIT Financing Advisory Commission with the federal stimulus HIT provisions?***

The HIT Financing Advisory Commission Report was limited to addressing the short- and long-term financing barriers to the adoption of clinical information systems (CIS) among California's healthcare safety net providers, and does not address the broader scope of health information technology and exchange (HIT/HIE). Many HIT Financing Commission recommendations do synchronize with the actions needed to advance the broader scope of California's HIT/HIE roadmap. The recommendations in the HIT Financing Commission Report identified many action steps and plans that are now necessary for CA to address to secure funding that is available in the HITECH provisions.

On April 20, 2009, the kickoff of California's initiative and activities for HIT/HIE adoption and expansion were announced by Secretaries Kim Belshé and Dale Bonner, HIT Deputy Secretary Jonah Frohlich, State Chief Information Officer Terri Takai and Sam Karp of the California Healthcare Foundation. This broader initiative builds off many of the recommendation that were originally put forward in the HIT Financing Advisory Commission Report. For example, each of the report's top five recommended state actions will be addressed during the state's broader HIT/HIE planning efforts over the next several months. More importantly, all the findings and recommendations of the HIT Financing Advisory Commission will be reevaluated and reviewed by our stakeholder advisory group for inclusion into short- and long-range planning outlined in the HIT/HIE roadmap.

### **Office of Systems Integration**

The Office of Systems Integration within the agency manages a number of large technology projects for the state. The projects include several major systems operated by health and human services programs, including CalWORKs, In-Home Supportive Services, Food Stamps, and Child Welfare Services. The office also manages the Unemployment Insurance Modernization Project. The unemployment insurance program is administered by the Employment Development Department (EDD), which is part of the Labor and Workforce Development Agency. Recent media reports have indicated that EDD is receiving up to 2 million calls per day and that a typical caller must call 20 times to get through to EDD staff.

In early 2009 the Governor proposed a consolidation of state information technology functions under the State Chief Information Officer (CIO). The Governor did not propose to move the Office of Systems Integration under CIO. In a letter responding to questions raised by the Little Hoover Commission regarding the agency's projects, the agency stated "...these projects are at critical stages and we have concerns that any changes to the current configuration could jeopardize the successful implementation of these projects."

#### ***19. How will the unemployment insurance project address the current problems being experienced at call centers?***

The Call Center Network Platform and Application Upgrade (CCNPAU) portion of the UIMOD project solution will expand call handling capability, allowing EDD to better manage workload when claim filing is at its highest, while also improving customer service by reducing call wait times. These improvements will still be dependent upon the available number of staff to answer the calls. EDD is attempting to increase staffing in an attempt to resolve this situation. Also, the Continued Claims Redesign (CCR) portion of UIMOD will allow customers to recertify for benefits through Internet and phone channels, in addition to the mail channel currently available. The increased recertification channels will improve



customer service, and provides the potential for fewer customer calls related to the filing or the status of their recertification for which there is limited timely communication due to current system constraints.

***20. Do you believe that the projects overseen by the agency could or should eventually be consolidated under CIO? Why or why not?***

In testimony from the CHHS to the Little Hoover Commission in February 2009, we noted that five of the six projects currently managed by the OSI are in the procurement phase or the design and development phase. These projects are worth an estimate \$1.3 billion. Both CHHS and the CIO testified that a change in project management at this time could jeopardize successful implementation of these projects.

There may be a time when it is possible to change the management structure of OSI projects without significant risk. However, any change will need to be consistent with the state's IT Strategic Plan and the IT governance structure established by the CIO. The CIO currently envisions a "federated" IT governance structure - a small project management office within the OCIO and new project management offices, like OSI, in the state's large agencies. This will enable the OCIO to set standards for project managers, coordinate IT project management and assume project management when intervention is required. At the same time, it will maintain authority and accountability for IT projects at the appropriate tier of state government. CHHS supports this plan for a "federated" IT governance structure and OSI will assist the OCIO whenever possible to help develop OSI-type offices within other agencies.

**Workforce Development**

Workforce shortages exist in various health and human services professions, including nursing and primary health care. These shortages can impact access to and quality of care. The Senate Health Committee held a hearing on March 4, 2009, regarding shortages in the state's health care workforce. At this hearing, the committee focused on the health careers pipeline and the importance of collaborating and working together to remove barriers.

***21. Which health and human services professions do you believe are the highest priority for the state to address in regards to workforce shortages?***

The Office of Statewide Health Planning and Development (OSHPD) is developing the Healthcare Workforce Clearinghouse Program. The Clearinghouse, will serve as a central repository for healthcare workforce and education data to assess statewide, regional and local health workforce trends and education capacity. The Clearinghouse will provide the information necessary to answer precisely this question. Several studies conducted by the UCSF Center for the Health Professions, the University of California Office of the



President, and the Campaign for College Opportunity have identified the following shortages:

- nurses (current shortage between 7,000 and 21,000);
- primary care physicians (projected shortage between 5,000-17,000 by 2015); and
- allied health workers (projected demand exceeds supply for pharmacists by 119%, for dental hygienists by 122%, for physical therapist assistants by 178%).

On the supply side, these shortages are being driven by: Steady levels of production; aging of the workforce, regional migration patterns, low instructor to student ratios resulting in high cost programs for colleges to offer; expanding employment options in the health professions.

On the demand side, shortages are being driven by: population growth, aging of the population, diversity of the population, and increasing rates of utilization.

***22. What activities has the agency initiated to address workforce shortages in the health and human services professions? How are you working with other agencies to address this issue?***

To address health workforce shortages in the health and human services professions, CHHS has done the following:

- Convened a physician workforce roundtable in 2007, which among others things identified the need for additional loan repayments for primary care physicians who practice in medically underserved areas of California. The Governor in 2008 signed legislation (AB 2439 -DeLaTorre and SB 1379 - Ducheny) to increase funding for the Steven M. Thompson CA Physician Corps Loan Repayment Program.
- Convened a Healthcare Workforce Diversity Advisory Council in 2007-08 to develop short and long-term recommendations to address health workforce issues, particularly among underrepresented populations;
- Administers the Song-Brown Healthcare Workforce Training Act and Program through OSHPD. The Song-Brown Program provides approximately \$6.6 million to Family Practice Residency Training Programs, Family Nurse Practitioner, Physician Assistant and Registered Nurse Education Programs annually. The Song-Brown Program makes a direct impact on the State workforce shortages by increasing the number of primary care providers and increasing access to health care for underserved populations throughout the State. Residents and students are trained and educated, gaining exposure and experience in providing health care in medically underserved areas of the State. Song-Brown Program residents and trainees provide more than 800,000 patient

encounters annually. The Song-Brown Program works with the University of California, California Community Colleges, California State Universities, Private Colleges, County entities and the Department of Mental Health to address the workforce shortages in the State by providing funding to train and educate primary care providers.

- Administers the National Health Service Corps (NHSC)/State Loan Repayment Program (SLRP) for California through OSHPD. The purpose of the NHSC/SLRP is to assist in the repayment of education loans for qualifying professionals who provide healthcare service in federally designated Health Professional Shortage Areas (HPSAs). Since the OSHPD began administering the NHSC/SLRP, OSHPD has placed a total of 503 eligible physicians, dentists, mid-levels, and mental health providers in HPSAs. The OSHPD currently awards \$1 million annually to 50 new and continuing practitioners.

To coordinate health workforce development efforts, CHHS through its various departments monitors the following:

- OSHPD currently oversees and facilitates the Health Care Workforce Clearinghouse Advisory Team with numerous other departments and systems including: DPH, Department of Consumer Affairs, CA Community Colleges, UC, CSU and many other professional, advocacy, and consumer organizations to implement the Health Care Workforce Clearinghouse Program which will be a central repository for health workforce and education data and information in California.
- DHCS has oversight of the J-1 Visa Program (The Immigration and Nationality Act (INA) provides the exchange visitor (J) nonimmigrant visa category for persons who are approved to participate in exchange visitor programs in the United States. The Federal J-1 Visa program allows states to recommend up to 30 foreign medical graduates for waiver of the requirement to return to their home countries upon graduation if they practice in underserved areas.) DHCS is currently working with representatives from the CA Medical Board, OSHPD, CA Hospital Association and the California Primary Care Association to develop criteria to fill J-1 slots with specialists needed to increase access to health care in rural and urban underserved areas when all slots are not filled by primary care physicians.

***23. What role, if any, do you believe the agency has in facilitating interactions between employers and educational institutions, including K—12, to further workforce development?***

OSHPD's programmatic focus has historically been on students already enrolled in health professions training programs and on health professionals who have completed their training. OSHPD's various scholarship and loan-repayment



programs encourage shortage area practice while the Song-Brown Program encourages the training of primary care family medicine and mental health professionals practitioners and registered nurses. A notable Office publication, Healthcare Pathways, is primarily targeted at the K-12 population (indeed many of California's current health professionals cite contact with this publication early in their educational career as a major impetus for their pursuing health professional training). Office staff also frequently make presentations to K-12 audiences to encourage them to enter the health professions.

OSHPD, through the administration of the Healthcare Workforce Development Division (HWDD), works toward increasing and diversifying California's healthcare workforce. HWDD's Health Careers Training Program (HCTP) works to reinforce skill sets needed to successfully complete health professional education preparation through a continuum of health workforce development, education and training programs. As an example, HCTP has just awarded over \$143,000 in Mini-Grants to programs throughout California that encourage growth and diversity in the health professions. Mini-Grant recipients will engage students through health career conferences and/or workshops and more in depth health career exploration as well as provide development and support for staff directly interacting with students as they enter and progress through the health career education pipeline.

The HCTP Mini-Grant program also promotes the creation and/or strengthening of educational partnerships, community support, and workforce preparation efforts between middle/high school, higher education, community organizations, government, funders, industry/employers, etc.

***24. The agency's departments oversee several employment training-related programs, including those that serve CalWORKs recipients and persons with disabilities. How does the agency assess whether these programs are adequately training these individuals for appropriate jobs in today's economy? What outcome measures are you tracking to ensure that these programs are successful?***

The programs mentioned in the prior answer that are administered by the OSHPD are evaluated annually, as well as with each application cycle to determine the number of requests received, the total dollars requested versus available funding, the geographic location of applicants, and the number of trainees/providers supported, and where applicable the annual number of patient encounters. In addition, recipients of OSHPD funding are periodically surveyed to determine the effectiveness of existing programs as well as programmatic changes that should be made or considered.

CDSS currently tracks several performance measures of the CalWORKs program such as Work Participation Rates, engagement rates, and employment rates as indicators of whether counties are moving recipients towards self sufficiency. Each recipient is assessed by the local welfare department. The



county assessment is used to determine what type of activities will lead the recipient toward self sufficiency. Each county maintains a list of local demand occupations. In addition, counties work with community partners such as the Workforce Investment Board, Employment Development Department, Community Colleges, and vocational training schools, to place recipients into these demand occupations.

### **State Workforce and Succession Planning**

A large proportion of the state's workforce will be retiring over the next several years. A March 2009 report by the State Auditor found that several departments under the Health and Human Services Agency's jurisdiction have a high percentage of employees in leadership positions who are age 50 or older (66 percent for the Department of Social Services, 65 percent for the Department of Public Health, and 61 percent for DHCS).

The report also describes several agency-wide efforts to address expected retirements, including an open hiring exam for the staff services manager classification, a supervisors' academy, and a leadership development academy. According to the report, none of the departments reviewed had developed workforce and succession plans that address all of the steps in the workforce planning model of the Department of Personnel Administration.

#### ***25. How would you evaluate the effectiveness of each of the agency-led workforce planning efforts to address expected retirements?***

We recognize the potential for a significant loss of expertise, experience, and institutional knowledge within CHHS departments over the next few years. To mitigate the impact of these losses, CHHS is taking important and immediate steps to ensure that "knowledge transfer" is a top priority. To determine how effective each individual effort has been is not a straightforward as it sounds.

The CHHS Agency initiated succession and workforce planning in early 2005. At that time, the Department of Personnel Administration had not yet developed any policies, guidelines or procedures for agencies and departments to use to as a model. Without control agency direction or guidance, CHHS developed a set of core competencies, designed and implement a first-level supervisors' academy, designed and implement a leadership develop academy, and designed and implemented an agency-wide intranet that is accessible to all departments under the CHHS umbrella.

CHHS has over the last four years, conducted dozens of open and promotional examinations on a collaborative basis, with CHHS departments working together to generate viable pools of candidates, infused with individuals who have never worked for the state previously. Our evaluation of our effectiveness is the extent to which we offer promotional opportunities to all employees, regardless of the

size of the department or the available personnel resources. We have proven repeatedly that each and every CHHS department can benefit from our collaborative examinations, and can use their extremely limited personnel resources in an efficient and effective manner.

As an example, the open Staff Services Manager I examination and both the leadership and supervisors academies address different aspects of the retirement drain. The Leadership Development Academy (LDA) is comprised of the "bench" of our middle managers, and prepares them for our highest level of executive leadership. This added skill set makes them better leaders where they are now, which we believe has a positive impact on efficiency and retention. The LDA grows CHHS leadership excellence and knowledge in all who participate. The evaluation of our effective of this Academy is based on the feedback from the participants, their sponsors, and their staff.

The Supervisors Academy curriculum includes the requisite training for the role of a first-line supervisor relative to performance, progressive discipline, etc.; but more importantly includes CHHS core competencies and sets a clear vision of management expectations for all Agency management. Both Academies use the core competencies to provide a common language of key skills and characteristics CHHS leaders must possess to effectively lead their organizations to accomplish CHHS goals and objectives.

The first-ever open Staff Services Manager I examination held in 2007 with over 3,000 candidates, exemplified how every entity within the CHHS "family" of departments collaborated together to help "build the bench" and infuse the candidate pool with individuals who had comparable outside experience, but were not currently state employees. By focusing on the competencies, the Supervisors Academy should improve the performance and retention of both first-level managers and those who report to them.

All CHHS departments are dedicated to developing, implementing and maintaining workforce analysis, recruitment and retention, and staff development strategies including leadership development and knowledge transfer. Under the broad direction of CHHS, each has an imperative to adopt a strategic approach to workforce planning and staff development to ensure we have the right number of people with the right skills, experience and competencies, in the right jobs, at the right time.

Workforce and succession planning are essential in CHHS. Under my leadership, we will ensure that departments develop a workforce analysis plan that provides data to anticipate turnover, appropriately plan and implement our recruiting, and develop employees for critical roles needed in the future.

**26. What steps has the agency taken to work with each of its departments to develop a comprehensive succession plan? Why are some departments**



***much further along than other departments in the development of their plans?***

The more critical issue for any of CHHS' departments is not whether they have a written plan that falls within a narrow box; rather, do we understand this critical leadership responsibility and taken informed actions to address the issue? CHHS, along with our departments, had already started on the path toward succession planning and management before DPA had first loaded the New York State planning guideline on the DPA website in the summer of 2005. The work and progress we completed to that point, while not fitting into the specific aspects of the DPA plan, covered in theory and concept, all of the aspects of effective planning and management.

The more important measures of whether departments are responsible stewards of very limited staffing resources are:

- Have we taken the time and effort to educate ourselves in the field of succession planning and workforce management?
- Have we researched and applied best practices into our approaches?
- Have we taken steps to apply the basic elements of generally accepted succession planning and workforce planning?
- Can we demonstrate competency and application of succession planning and workforce management practices?

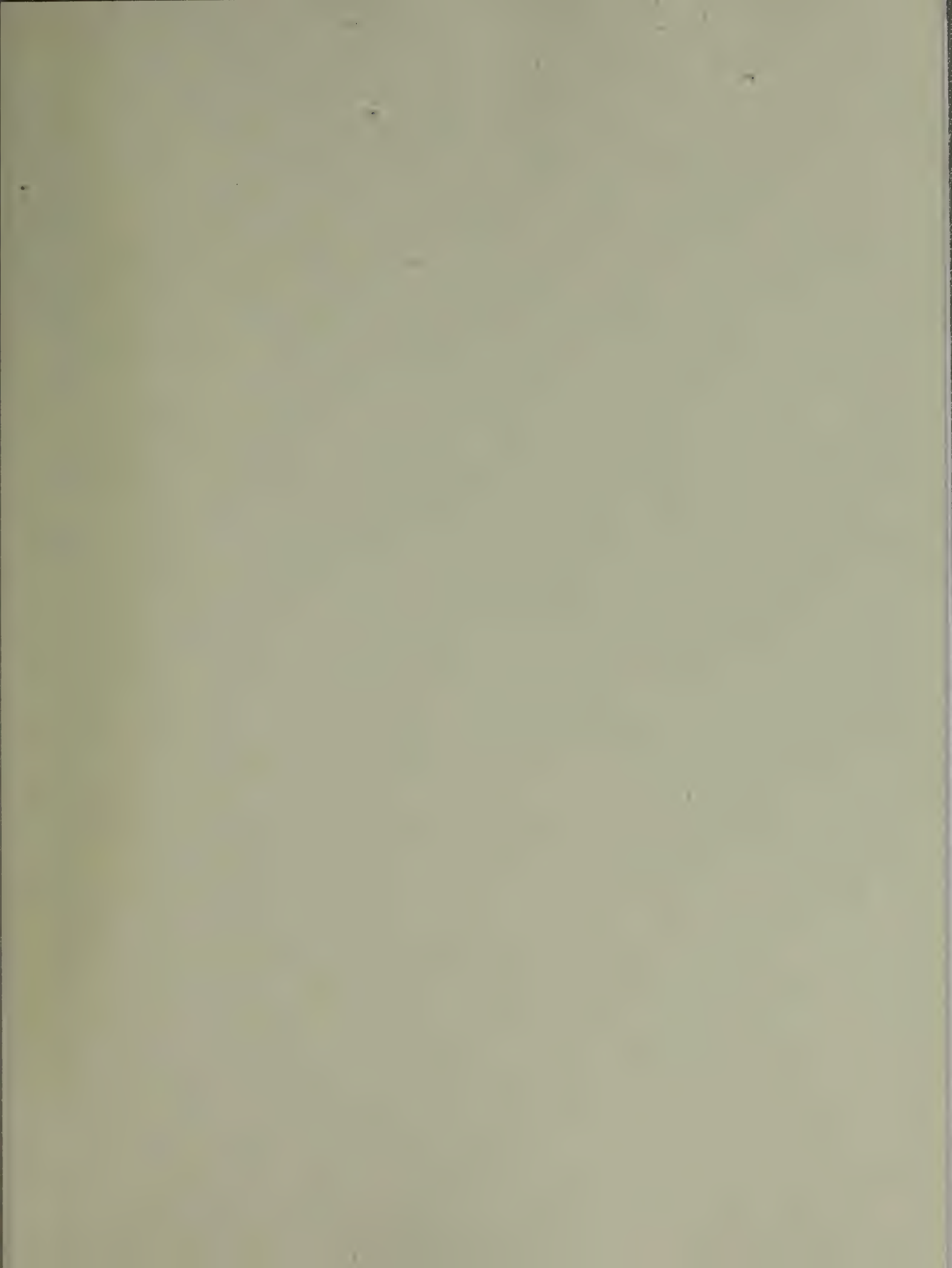
We chose to focus on the priorities for the CHHS: addressing the weak bench; infusing candidate pools through open examinations; and developing CHHS leaders in a structured controlled environment. So, while we do not have a formal plan, we have completed analyses of our workforce, conducted surveys, and identified our priorities for succession planning and workforce management. In collaboration with all CHHS departments, board and offices, our strategic planning committee, comprised of Chief Deputy Directors, workforce and succession planning managers and other leaders across the entire Agency identified **recruitment** and **retention** as the top priorities for workforce planning and management. It is not practical for an agency the size and complexity of CHHS, with over 33,000 people across twelve departments, one board, and two offices, to have a "one size fits all" workforce management plan. The strategies and tactics that would be employed by a Department of Social Services with over 4,200 employees and which has had a workforce planning effort in place for over twelve years, are not practical solutions for the Emergency Medical Services Authority, with three positions in their "senior management" and a total of 61 positions.

While some of the CHHS departments are farther along in their succession planning and workforce development activities because of the volume of resources available to work on the operational priorities, all departments are fully aware of the issues and challenges to "build the bench"; all are active participants in the Agency-wide strategic planning committee; and all have

implemented strategies that meet their needs given their resources, size, scope and complexity of the challenge and the department. All have some degree of data on where current succession planning and workforce planning problems lie, and all are taking department-specific action steps to address recruitment and retention, whether it is more targeted recruitment and outreach; different strategies to retain employees such as providing training and recognition programs; or strategies to institutionalize and retain knowledge through mentoring, document repositories or other tools.









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III

APPEARANCES

MEMBERS PRESENT

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- 3
- 4 SENATOR DARRELL STEINBERG, Chair
- 5 SENATOR SAMUEL AANESTAD
- 6 SENATOR ROBERT DUTTON
- 7 (Not present at commencement of proceedings)
- 8 SENATOR JENNY OROPEZA
- 9 (Not present at commencement of proceedings)
- 10 SENATOR GIL CEDILLO
- 11 (Not present at commencement of proceedings)

STAFF PRESENT

- 12 GREG SCHMIDT, Executive Officer
- 13 JANE LEONARD BROWN, Committee Assistant
- 14 NETTIE SABELHAUS, Appointments Consultant
- 15 DAN SAVAGE, Assistant to SENATOR CEDILLO
- 16 BILL BAILEY, Assistant to SENATOR AANESTAD
- 17 CHRIS BURNS, Assistant to SENATOR DUTTON
- 18 BRENDAN HUGHES, Assistant to SENATOR OROPEZA

ALSO PRESENT

- 21 LEA A. CHRONES, Member, Board of Parole Hearings
- 22 DOUGLAS S. DRUMMOND, Member, Board of Parole Hearings
- 23 HOLLIS H. GILLINGHAM, Member, Board of Parole Hearings
- 24 ANTHONY P. KANE, Member, Board of Parole Hearings
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1	<b>PROCEEDINGS</b>
2	CHAIRMAN STEINBERG: Good afternoon. The
3	Senate Rules Committee will come to order. We do not
4	yet have a quorum, so without objection we will begin as
5	a subcommittee.
6	We have four gubernatorial appointees required
7	to appear today and a number who are up for confirmation
8	who are not required to appear. And what we are going
9	to do is take the members of the Board of Parole
10	Hearings first -- those are the members, again, required
11	to appear -- in the following order, with one caveat,
12	that -- because we don't want to keep our good
13	colleague, Senator Simitian, sitting for too long, even
14	though I know he finds this subject matter very
15	interesting. We're going to go in this order: Lea A.
16	Chrones first.
17	MS. SABELHAUS: Chrones.
18	CHAIRMAN STEINBERG: Chrones, excuse me.
19	Douglas S. Drummond, Hollis H. Gillingham,
20	and Anthony P. Kane. But what we will ask is Senator
21	Simitian to introduce Ms. Gillingham, and then we will
22	go back to Ms. Chrones. All right.
23	SENATOR SIMITIAN: Thank you, Mr. Chairman and
24	Members. I just wanted to briefly extend to my
25	constituent, Holly Gillingham, the courtesy of a

1



1 personal introduction.

2 I know that the work of this Committee is  
3 difficult, that you see many faces and many pieces of  
4 paper, but I know as well that you realize they are real  
5 people with real stories who have lived real lives, and  
6 who have done good work behind those pieces of paper.  
7 Holly Gillingham, in my view, is one such person.

8 We've known and we've worked together over the  
9 course of more than a decade, and she is someone that I  
10 can recommend to you as being diligent, fair, even-  
11 handed in the work that she does. I know her largely  
12 through my days as a county supervisor and interaction  
13 with law enforcement at that time in Santa Clara County.

14 You'll have a chance to take your own measure  
15 of her shortly, and I think you'll come to the same  
16 conclusion I have over a much longer period of time.  
17 This is someone we should be pleased to have in public  
18 service here in the state, and I wanted to take this  
19 opportunity to convey that to you in a more formal way.

20 CHAIRMAN STEINBERG: Thank you very much,  
21 Senator Simitian, for coming by. It means a lot to the  
22 Committee.

23 Again, I think we'll get to you in just a  
24 little bit.

25 Appreciate it. Maybe I can pronounce the first

2

1 from my mother, who in 1938 made a very bold and  
2 personal decision to marry outside of her faith. In the  
3 following years, the consequences of that decision  
4 resulted in unkind words and prejudice. I never really  
5 understood why. It never made sense to me. I always  
6 knew that it just wasn't right.

7 The lessons I learned growing up became tools  
8 that I used in life, particularly at work. In 1977, as  
9 a new correctional officer at San Quentin, I very  
10 quickly learned that my most effective tool was my  
11 ability to effectively communicate, particularly with  
12 the inmates. Like many of them, I grew up in prison,  
13 only I was a correctional officer. I understand where  
14 they live, where they sleep, eat, work, and dream. I've  
15 seen them grieve from the loss of a loved one, witnessed  
16 their joy of parenthood, seen them get married, seen  
17 them get divorced. I see them succeed in school and  
18 work and life. And I have also seen them fail. I've  
19 seen them victimized by other inmates, and I have seen  
20 them be victims of violence at their own hand.

21 The lessons that I've learned are embedded in  
22 my mind and my heart. My childhood as well as my career  
23 in corrections have provided me with a diverse set of  
24 attributes and experiences that enhance my ability to  
25 provide fundamental fairness in each hearing I chair and

4

1 member's name correctly on my third try.

2 Lea Ann Chrones, welcome to you. Again, we are  
3 beginning as a subcommittee here. We do have a  
4 tradition in the Rules Committee in which we invite you  
5 to introduce any member of your family or any special  
6 guest in the audience with you here today.

7 MS. CHRONES: Unfortunately, my son was unable  
8 to make it. He's in school. However, I have a couple  
9 very close friends, Mr. and Mrs. George Giurbino,  
10 friends from work --

11 CHAIRMAN STEINBERG: Welcome.

12 MS. CHRONES: -- and Ms. Linda Barnett as well.

13 CHAIRMAN STEINBERG: Welcome. Welcome to all  
14 of you.

15 Why don't we begin with you making a brief  
16 opening statement, and we can -- and then we can ask  
17 some questions.

18 MS. CHRONES: All right. Thank you, sir.

19 Mr. Chairman and Senators, thank you for the  
20 opportunity to appear before you today to respond to  
21 your questions in consideration of my appointment as  
22 commissioner for the Board of Parole Hearings.

23 Fundamental fairness and effective  
24 communication are two of the strengths I bring to the  
25 position of commissioner. My strength comes in part

3

1 each decision I make.

2 I'm happy to respond to any questions you may  
3 have today.

4 CHAIRMAN STEINBERG: Thank you very much.

5 I do have a series of questions, and some of  
6 them are questions I will be asking of all of the  
7 nominees today, so those of you sitting out there, if  
8 you could plug your ears, I'd appreciate it. Just a  
9 joke. You get a little bit of an advantage here, I  
10 suppose.

11 Let me ask you this: A lot of talk now -- this  
12 is unrelated to the specific duties of your job. A lot  
13 of talk now, especially in this era of terrible -- our  
14 terrible fiscal situation, about pensions, and I want to  
15 ask you, as I want to ask the others, you retired from  
16 CDCR at a high level with a full safety retirement. Are  
17 you receiving a state pension?

18 MS. CHRONES: Yes, I am.

19 CHAIRMAN STEINBERG: And you have a full-time  
20 salary as a member of the Board of Parole Hearings?

21 MS. CHRONES: Yes, I do.

22 CHAIRMAN STEINBERG: Let me ask you about your  
23 philosophy regarding how you view your job. Obviously,  
24 you sit in judgment of people who have been sentenced to  
25 life in prison with parole, but do you also see yourself

5

1 as a correctional leader?

2 What I mean by that is: Do you see yourself  
3 and have you acted as an advocate for better  
4 programming, for better rehabilitation services, for a  
5 greater connection between the institution and the  
6 community?

7 MS. CHRONES: Well, absolutely. You know,  
8 working for the department for 30 years and going from  
9 correctional officer, and I retired -- I was at the  
10 level of an associate director, actually, a senior  
11 advisor to the reception centers, and my experience over  
12 that time certainly exposed me to not only establishing  
13 programs for inmates, but certainly observing them,  
14 justifying them, and requesting them.

15 My experience on the board tells me that  
16 programs are extremely important. And every opportunity  
17 that I get as a commissioner -- For example, when I go  
18 to an institution to do hearings, if I haven't been  
19 there before, or if I have time, certainly I stop in the  
20 warden's office and talk to the warden and let him or  
21 her know that I'm in their prison, and if there's  
22 observations I have concerning anything, I share them  
23 with them at every given opportunity.

24 CHAIRMAN STEINBERG: Thank you.

25 I want to get to the heart of, I think, what my

6

1 unsuitable for parole because you remain a present risk  
2 of danger if released."

3 Inmate Bruce Mitchell, "You still pose a  
4 present risk of danger to society."

5 Inmate Reggie David, "You are not suitable for  
6 parole, because you still pose a present risk of  
7 danger."

8 And our staff tells me that you have used a  
9 similar standard in other cases. And then I look at  
10 Title 15 regulations, which are the guide for parole  
11 hearings, and it is very specific. It says, "Regardless  
12 of the length of time served, a prisoner shall be found  
13 unsuitable for and denied parole if, in the judgment of  
14 the panel, the prisoner will pose an unreasonable" --  
15 and that's the key word -- "an unreasonable risk of  
16 danger to society if released from prison."

17 And so as we looked at this and as we seek to  
18 confirm appointees who are going to be fair and balanced  
19 in the way they look at these cases, the difference  
20 between the two raised questions for me.

21 MS. CHRONES: Okay.

22 CHAIRMAN STEINBERG: And I want to ask you if  
23 you can explain, first of all, your understanding of  
24 Title 15, and how that -- how your understanding relates  
25 to the stated criteria that you put forward in at

8

1 concern may be about your nomination and maybe have a  
2 little bit of a longer conversation about the  
3 following --

4 We do have a quorum. Before we get to that,  
5 why don't we establish a quorum. Thank you.

6 MS. BROWN: Senator Cedillo.  
7 Dutton.

8 SENATOR DUTTON: Here.

9 MS. BROWN: Dutton here.

10 Oropeza.

11 Aanestad.

12 SENATOR AANESTAD: Here.

13 MS. BROWN: Aanestad here.  
14 Steinberg.

15 CHAIRMAN STEINBERG: Here.

16 MS. BROWN: Steinberg here.

17 CHAIRMAN STEINBERG: Okay.

18 And that is the standard that you use to  
19 determine whether an inmate is suitable or not suitable  
20 for parole.

21 And I want to cite a couple of instances from  
22 the particular transcript in which you ruled against  
23 particular inmates with, generally, the same language.

24 Inmate Robert Calderone, you stated, "After  
25 weighing all the evidence presented today, you are

7

1 least -- in at least three cases.

2 MS. CHRONES: Well, I certainly understand  
3 Title 15, and I see what you're saying with the  
4 difference in the words that I may have chosen to use.  
5 In my mind, an unreasonable risk of danger would be the  
6 same thing as a current risk of danger. I mean, that's  
7 just in my mind --

8 CHAIRMAN STEINBERG: Go ahead and explain that,  
9 because that's the core of it, and I want to understand  
10 it.

11 MS. CHRONES: In my mind, if there's a current  
12 risk of danger to public safety or to society, it's our  
13 responsibility to ensure that the inmate is not released  
14 at this point in time.

15 CHAIRMAN STEINBERG: And how do you interpret  
16 the definition of "unreasonable"?

17 MS. CHRONES: Well, when we determine suitable  
18 or not suitable, we use suitability factors, and those  
19 are found in CCR 2402. And there's a number of  
20 suitability factors. There's static factors, such as  
21 the commitment offense, past criminal behavior, the  
22 prior social history; and then there's dynamic or  
23 changing factors, and that would be his institutional  
24 adjustment, the mental state -- past and present mental  
25 state and attitude about the crime, and then certainly

9



1 parole plans as well.

2 CHAIRMAN STEINBERG: So I'm sure when going  
3 through the checklist in that evaluation, that you must  
4 see many shades of gray here, that nobody is absolutely  
5 risk free. And I'm sure many are too risky by anybody's  
6 reasonable definition to grant parole.

7 But when you use the -- When you don't include  
8 the word "unreasonable," and you say "present risk of  
9 danger," can't that be interpreted to mean that if there  
10 is any risk that a lifer will commit in the -- on the  
11 outside again, that that's the reason to deny them  
12 parole?

13 MS. CHRONES: No, it's not "any risk." It's  
14 certainly an unreasonable risk. And if my choice of  
15 words indicates to you that there's a difference there,  
16 it's unintentional on my part. For me, they do have to  
17 have an unreasonable current risk.

18 CHAIRMAN STEINBERG: Can you give me an example  
19 of the difference in a real case between someone who  
20 might pose a risk but not an unreasonable risk, and  
21 thereby you recommended the granting of parole?

22 MS. CHRONES: On one that I granted or --

23 CHAIRMAN STEINBERG: Sure. I mean, or just --  
24 I want to understand, because I used to be a judge, an  
25 administrative law judge, so I understand that cases are

10

1 adjustment, for example, or his mental state or  
2 attitude, those -- depending on how his adjustment is --  
3 For example, if he's in for a murder and he stabs  
4 someone to death, and while he was incarcerated he had  
5 disciplinaries, perhaps, of having possession of a  
6 prison-inmate-stabbing instrument, or he certainly  
7 attacked somebody, that provides a nexus between his  
8 current behavior and his previous behavior. That  
9 certainly is a very unreasonable risk, depending upon  
10 how long ago it was.

11 I mean, there's many factors. We don't just  
12 use one. We consider everything that we can get our  
13 hands on to read, and certainly what the inmate gives us  
14 at the hearing as well.

15 And then compared to somebody who was in for  
16 the same offense, however had no disciplinaries,  
17 certainly had a good understanding of what he had done,  
18 why he had done it, factors that provided insight, had  
19 remorse, had solid parole plans. And do we know for  
20 sure that when we give a grant of parole, if that  
21 particular man is not going to get out in society and do  
22 something wrong? We don't know 100 percent for sure,  
23 but we certainly look at everything and make the best  
24 determination that we can. And those are just two  
25 examples of the difference.

12

1 very fact specific. And judges or hearing officers have  
2 an incredible amount of discretion, because, you know,  
3 the cases I used to do, generally somebody -- I heard  
4 cases of fired workers, and generally the workers did  
5 something wrong. But the question was always, you know,  
6 *Is it serious enough to warrant a firing, or should they*  
7 *have been suspended for 30 days or been reprimanded?*  
8 And that's a completely discretionary decision.

9 So in these cases -- Let's stipulate that  
10 100 percent of the people whose cases you hear pose a  
11 risk, right, just by virtue of the crime that they  
12 committed in the first place. I need to understand,  
13 though, sort of factually, if you can give me a few  
14 examples, about what the line is between an unreasonable  
15 risk and an acceptable risk.

16 MS. CHRONES: Okay. I'll try and do my best.

17 CHAIRMAN STEINBERG: Okay. I'm not -- You  
18 know, this is all part of understanding here.

19 MS. CHRONES: Okay. For example, if we see  
20 someone -- If I say "he," it's only because I tend to do  
21 more male cases.

22 CHAIRMAN STEINBERG: That's okay.

23 MS. CHRONES: Again, with the static factors,  
24 the commitment never changes. The prior criminality  
25 never changes. But when we look at his institutional

11

1 CHAIRMAN STEINBERG: Of course when we look at  
2 the statistics in terms of your grants and your denials,  
3 and this is largely true of the other nominees as well,  
4 the denials sort of overwhelm the grants. Why is that?

5 MS. CHRONES: Well, I think part of it -- In my  
6 initial few months as a commissioner, I was assigned  
7 primarily to level-three, level-four institutions, and I  
8 just wasn't seeing the type of inmate that was ready  
9 yet, and that just is something we can't control.

10 I truly look at everything, and if there's --  
11 if I feel that the person, man or woman, is ready and  
12 that they have, under the suitability factors, worked  
13 and proven that they are ready to be a member of society  
14 again, then I absolutely will give them a grant.

15 CHAIRMAN STEINBERG: Okay. Questions from  
16 other Members at this point.

17 Senator Aanestad.

18 SENATOR AANESTAD: Yes, mainly on the same  
19 issue.

20 You told me a story this morning about a recent  
21 inmate that you did grant parole who is now a neighbor.  
22 Would you care to relate that and what went through your  
23 mind when you granted parole.

24 MS. CHRONES: Absolutely. Well, when we were  
25 being trained initially before we went out to be

13



1 commissioners, part of what we talk about is, you know,  
2 when we're granting -- giving or granting parole, would  
3 you want this person as your neighbor. It's certainly  
4 not a criteria, but it's just a way to think about is he  
5 really ready. Is he really ready to be a member of  
6 society.

7 And months later, while at the California Men's  
8 Colony in San Luis Obispo, I saw a gentleman, and he,  
9 again, had served a good number of years, and he had  
10 done absolutely everything. I felt, in reviewing his  
11 case factors, he had met every suitability factor. He  
12 had solid parole plans. He had rehabilitated himself,  
13 from what I could see, presented himself well. He had  
14 been disciplinary free. He had good insight, extreme  
15 remorse. And the panel, the deputy commissioner and I,  
16 recommended a grant of parole.

17 I don't believe that he's actually through the  
18 governor's office yet. I think it was less than  
19 120 days ago. However, when we went over his parole  
20 plans, unbeknownst to him, of course, he was moving  
21 about a mile and half to two miles away from my home  
22 with his sister.

23 So that original thing that we said, *Would you*  
24 *mind if he paroled as your next-door neighbor?* kind of  
25 came right back to me. He wasn't my next-door neighbor,

1 but he was going to be a member of my community, and I  
2 had absolutely no problem with that. He was ready.

3 SENATOR AANESTAD: We talked this morning, and  
4 for the rest of the panel, I have talked to all four of  
5 them about the importance of a psychological evaluation,  
6 especially now -- I think they're only done once every  
7 five years or so. And could you kind of --

8 I guess my question was: The prison receiver  
9 has taken over the healthcare portion of our prison  
10 system citing that the medical treatment of prisoners  
11 was unconstitutional, substandard, and I'm wondering if  
12 you found that with the psychological evaluations, which  
13 is part of mental health, had the same moniker, or what  
14 was your opinion of them, and I was a little surprised  
15 at the answer.

16 Go ahead.

17 MS. CHRONES: As the panel may know, effective  
18 January 2009, this year, forensic assessment team did  
19 change the way that they administered psychological  
20 exams and resulting reports. They will be doing them  
21 once every five years, approximately, and they are more  
22 detailed.

23 They, in my mind, have gotten much better.  
24 They're very consistent. They're all done in the same  
25 format. They're all done so that when we review them,

1 just because a different doctor may do the report, we  
2 still know where to find the same information, and it's  
3 very -- formatted the same way, which is better for us.  
4 I find that predominantly they're very well  
5 done. They're very detailed and give us a lot of  
6 information to use.

7 SENATOR AANESTAD: Okay. Thank you.

8 CHAIRMAN STEINBERG: Thank you, Senator. Let's  
9 hear from witnesses in support of Ms. Chrones. Are  
10 there witnesses in support?

11 Are there witnesses in opposition?

12 Come on up, please.

13 MR. MILLER: Good afternoon, Senator Steinberg  
14 and Committee. I'll take just a moment of your time.

15 My name is Donald Miller. I'm a former lifer.  
16 I practice paralegal work and work for about six  
17 attorneys who do parole hearings, and I review literally  
18 thousands of transcripts.

19 I speak for myself and the majority of the  
20 attorneys with whom I work in opposing all four of the  
21 candidates today, including Commissioner Chrones, for  
22 the following two reasons. And I believe, your Honor --  
23 Senator Steinberg and Senator Aanestad have hit the nail  
24 on the head with the two questions that you've asked.

25 But first, as you know, the statute 5075 of the

1 Penal Code requires the composition of the commissioners  
2 to represent a cross-section of the community. All of  
3 the members of our parole board, all the commissioners  
4 with the exception of one new nominee are from law  
5 enforcement and peace officers, and the Committee has  
6 already approved two of them on the commission, and that  
7 should be enough.

8 But more importantly, even though there's this  
9 five-year rule that has been put in regarding  
10 psychological evaluations, virtually every life prisoner  
11 who goes before a panel at the Board of Parole Hearings  
12 has had a recent psychological evaluation, and in  
13 reviewing the transcripts of Ms. Chrones's hearings,  
14 about 12 of them, in 10 of those the psychologists had  
15 determined -- and this is the reason the board hires  
16 these forensic psychologists -- that these inmates would  
17 pose a very low or a low risk of recidivism if paroled.  
18 Yet in every single case, the commissioner overturned  
19 that or disregarded it and ruled that they would pose a  
20 present risk or an unreasonable risk.

21 So if the Committee is determining whether to  
22 confirm a candidate, that candidate should have some  
23 training or education to qualify him or her to overturn  
24 the psychological evaluation, some qualification to  
25 predict recidivism, because they're completely

1 disregarding the psychological evaluation.

2 In the other two cases, the inmate was regarded  
3 as low to moderate, because in evaluating  
4 psychologically these inmates, if -- the serious crime  
5 itself, even if it's 20 or 30 years old, will always  
6 pose them as a moderate candidate, so they're low to  
7 moderate. In all of these 12 cases, by law, since they  
8 didn't constitute an unreasonable risk, they should have  
9 been granted a reasonable parole date. In all 12 cases,  
10 they were denied.

11 So there's complete disregard for the  
12 psychological evaluations. Therefore, the commissioner  
13 should have training or experience to predict  
14 recidivism. Otherwise, the entire process is arbitrary.

15 So for those two reasons, no qualification and  
16 contrary to statute, we respectfully oppose the  
17 nomination of Ms. Chrones.

18 CHAIRMAN STEINBERG: I have a question, but go  
19 ahead.

20 SENATOR AANESTAD: Sir, you gave me two  
21 reasons, and I don't buy either one of them.  
22 Apparently, you forgot the follow-up paragraph to the  
23 section on the composition of the parole board when  
24 you're talking about a cross-section, because I'm  
25 reading the next paragraph which says "Insofar as

18

1 practical, commissioners and deputy commissioners shall  
2 have a varied interest in adult correction work, public  
3 safety, and shall have experience or education in the  
4 field of corrections, sociology, law enforcement," and  
5 then "medicine, mental health, or education."

6 I think it's very important that you forgot  
7 that part in your testimony and it biases your  
8 testimony.

9 Second of all, you just said there's a complete  
10 disregard for the psychological report. I asked this  
11 nominee how she valued the psychological evaluation.  
12 She said to me that it was a very important tool, and  
13 she thought they were being done very efficiently and  
14 that they were a very good and important tool, just one  
15 tool, but an important tool. So I don't see where your  
16 testimony jibes with what's going on.

17 CHAIRMAN STEINBERG: Can I pick this up before  
18 he responds, because just to sort of frame the  
19 fundamental question again, and we'll have Ms. Chrones,  
20 of course, respond, the question that Mr. Miller raises  
21 in my mind is one I asked earlier.

22 If, in fact, the psychological profile is  
23 important and relevant, and if it's true, and I'd like  
24 you to respond, that in 10 out of 12 cases a  
25 psychological report found an inmate to be at low risk

19

1 of recidivism, and yet they were denied parole, is there  
2 more significance to using the term "present danger"  
3 than the "unreasonable risk of danger" that Title 15  
4 requires?

5 The two go together, because, again -- What's  
6 your response to that?

7 MR. MILLER: Thank you. Are you talking to me?

8 CHAIRMAN STEINBERG: I was talking to  
9 Ms. Chrones, actually.

10 Go ahead.

11 MS. CHRONES: Thank you. Again, as Senator  
12 Aanestad said, the psychological evaluation is one of  
13 many things that we look at during the hearing. It  
14 certainly is not solely used. And the ratings  
15 themselves, although we do consider all the information  
16 in the report, many times in the narrative of the  
17 report, there's a lot of really important information  
18 that we use in formulating questions. And when we ask  
19 those questions, we may get other information from the  
20 inmate than what, perhaps, the doctor did.

21 Something else that can occur is that depending  
22 on when the psychological report was actually done, the  
23 inmate may have disciplinaries or other issues that have  
24 come up that the doctor was unaware of. And so, again,  
25 it's one thing. We don't automatically use it solely.

20

1 CHAIRMAN STEINBERG: Let me ask you this: In  
2 the case you cited earlier about the individual who was  
3 going to live in your community, in that case, did you  
4 deem that individual to have any risk of recidivism?

5 MS. CHRONES: I don't recall specifically the  
6 details of that case. I do remember where he was going  
7 to live, but I honestly don't remember the details of  
8 it. I apologize.

9 CHAIRMAN STEINBERG: Okay. Sir.

10 MR. MILLER: Thank you, your Honor.

11 First of all, the psychologist sits down with  
12 the inmate in a personal interview that's sometimes as  
13 long as the board's interview and reviews the same  
14 records that the board does. And it's hard to fathom  
15 that the psychologist would miss something, although  
16 that's possible.

17 The psychologist not only interviews the  
18 inmate's social history, background, prison record and  
19 the crime in great detail, but also administers a series  
20 of psychological tests which are standard now with the  
21 department to predict the recidivism.

22 In every single case but one that we've seen in  
23 which Ms. Chrones has denied parole, the psychologist  
24 has found that the inmate would pose a low risk of  
25 danger if paroled. And to determine that -- at the

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1 complete opposite end of the spectrum that that inmate  
2 would pose an unreasonable risk would require something  
3 more than just speculation. It would require some  
4 training, some experience, some education, and there  
5 isn't any in any of these cases.

6 What Senator Aanestad brought up is important,  
7 that we have parole board members from these other  
8 sectors. We don't have any parole board members that  
9 you'll find in most states, former judges, former  
10 psychologists, former psychiatrists, clergy, and people  
11 from those areas. All we have is former law enforcement  
12 and peace officers.

13 The statute is mandatory. It says "... shall,  
14 whenever possible, include members from all of the areas  
15 of the state." We have nobody from labor; we have  
16 nobody from farming; we have nobody from the major  
17 industries. All we have is former law enforcement.

18 And, particularly in the case as a warden,  
19 whose job was to keep these people locked up, there  
20 seems to be some inherent bias. Just to repeat that  
21 phrase in every single determination that the inmate  
22 would pose an unreasonable risk when there's absolutely  
23 no such evidence --

24 CHAIRMAN STEINBERG: Okay. Thank you,  
25 Mr. Miller.

22

1 Senator Dutton.

2 SENATOR DUTTON: One thing I became aware of  
3 early on when we were talking about these kind of cases,  
4 that you actually -- you were deputy commissioner, but  
5 you actually work with a deputy commissioner, so both of  
6 you have to make a determination. It's not one or the  
7 other. You have to be in unison with whoever the  
8 hearing officer that you're working with is also, right?

9 MS. CHRONES: Yes. We all work with a deputy  
10 commissioner. The panel is comprised of two. When we  
11 deliberate, we discuss it together at length. We come  
12 to separate decisions.

13 In my particular case, I have never had a split  
14 decision, but there can be a split decision.

15 SENATOR DUTTON: In the cases that we're  
16 talking about with you, you never really had a split  
17 decision?

18 MS. CHRONES: No.

19 SENATOR DUTTON: You always worked it out --

20 MS. CHRONES: Yes.

21 SENATOR DUTTON: If there was some  
22 disagreement, if you denied parole, then it's my  
23 understanding it gets appealed to the full board, right,  
24 or it can be, or there is a process, right?

25 MS. CHRONES: Yes. There's a process of appeal

23

1 through the court. If there's a split vote, then it  
2 does go to the full board for en banc.

3 SENATOR DUTTON: Okay. Thank you. I just  
4 needed clarification of that.

5 SENATOR AANESTAD: Can I also say one thing?

6 CHAIRMAN STEINBERG: You can say two things.

7 SENATOR AANESTAD: The concluding statement of  
8 Mr. Miller was that it's a warden's job to keep somebody  
9 locked up. I thought the department just underwent a  
10 name change in recognition of the fact that  
11 rehabilitation is also a major function of what a warden  
12 is supposed to be doing.

13 MS. CHRONES: You know, the warden wears many  
14 hats. One of them is to keep inmates inside so they  
15 don't get out and hurt people outside. But that is,  
16 again, one hat.

17 It is our responsibility to make sure the  
18 inmates under our care are trained, are educated, have  
19 opportunities to address substance abuse, if they have  
20 it. We provide everything for them. We provide them  
21 food, clothing, shelter. Everything. And it's the  
22 warden's responsibility to ensure that everything gets  
23 taken care of for them.

24 CHAIRMAN STEINBERG: Next witness, please.

25 MS. HERNANDEZ: My name is Peggy Hernandez. I

24

1 am the spouse of a life-term inmate. Thank you for the  
2 opportunity to speak before you.

3 I am present today to voice my opposition to  
4 the appointment of the Board of Parole Hearing  
5 commissioners whose background, education, and  
6 experience is largely from the law-enforcement  
7 community.

8 California is at a crossroads, and the public  
9 is expecting a change. I chose to be present today to  
10 give a voice to that change and what is needed. I plead  
11 with Committee Members today to appoint a Board of  
12 Parole Hearings commissioner to reflect the diversity of  
13 the people of the state of California and with the  
14 qualifications from a broad range of backgrounds and  
15 experiences.

16 Without a doubt, individuals with  
17 qualifications rich in law enforcement are adept at  
18 arrests and firearms, search and seizure, and the  
19 operation of a correctional facility. However, these  
20 same individuals rarely possess the qualifications and  
21 training to assess the psychological, sociological, and  
22 rehabilitative growth of individuals convicted of  
23 criminal activity and appropriately determine that  
24 individual's worthiness and suitability for release.

25 As such, what the present board and former

25



1 Board of Parole Hearing commissioners continue to  
2 demonstrate is an ongoing denial of individuals who are  
3 otherwise prepared for parole and who have met their  
4 sentencing obligations.

5 Critical changes in California's correctional  
6 system begin with the individuals empowered to make the  
7 decisions regarding the parole suitability of life-term  
8 inmates. The exclusive appointment of individuals with  
9 backgrounds in law enforcement must be rejected. The  
10 narrow professional experience and personal opinions  
11 have proven to cloud the Board of Parole Hearings'  
12 ability to objectively evaluate the release of life-term  
13 inmates.

14 As such, the effectiveness of the Board of  
15 Parole Hearings is greatly diminished when individuals  
16 remain incarcerated at public expense, even though all  
17 other reliable indicators documented in the inmate's  
18 file by trained and licensed professionals fail to  
19 support the conclusions of the Board of Parole Hearings.

20 The public is outraged with the current state  
21 of governmental operations in general and the increased  
22 cost associated with incarceration specifically. Making  
23 changes to the system requires appointment of  
24 individuals who are capable of an objective analysis  
25 based on factual information.

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1 The dismal rate of release for life-term  
2 inmates reflects a failure on the part of the Department  
3 of Corrections and Rehabilitation and the Board of  
4 Parole Hearings, not just the failure of the individual  
5 who re-offends.

6 In closing, at the age of 19, with no prior  
7 criminal history, my husband was sentenced to  
8 second-degree murder to a term of 17 years to life with  
9 the possibility of parole. So today I ask: After  
10 23 years of continued incarceration, what is making his  
11 parole impossible?

12 Just as a matter of a sidebar, today he is in  
13 surgery in order to get his gallbladder removed at State  
14 expense, despite the fact that he is on my health  
15 insurance policy.

16 There's little disagreement over the fact that  
17 the current parole system is not working effectively. I  
18 urge the Committee to reject the appointment of this  
19 individual and other individuals associated with the old  
20 way of doing business. More of the same will not result  
21 in any improvement of the system.

22 And I would like to address a comment that was  
23 made --

24 CHAIRMAN STEINBERG: Briefly, ma'am. Briefly.  
25 MS. HERNANDEZ: -- regarding the individuals

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1 who sit on the Board of Parole Hearings. You can have  
2 an individual who has previous experience with the  
3 Department of Corrections and Rehabilitation in the  
4 capacity of an educator or a medical professional. It  
5 is not exclusively necessary to have an individual who  
6 has served in a public safety/law enforcement position.

7 Thank you.

8 CHAIRMAN STEINBERG: All right. Any other  
9 witnesses in opposition?

10 All right. One, we don't have a completely  
11 full Committee at this point, but I want to --

12 First of all, Ms. Chrones is obviously a  
13 qualified and dedicated public servant who takes her job  
14 seriously, and I don't think anything that I've seen or  
15 heard would represent, you know, a long-term obstacle to  
16 our confirming you. However, I am concerned about the  
17 training and the standard that, in fact, not only you  
18 but some of your other commissioners appear to be using  
19 in evaluating these cases.

20 I understand that you see "present risk" the  
21 same as "unreasonable risk," but --

22 Your year runs out at the end of July.

23 MS. CHRONES: Yes, sir.

24 CHAIRMAN STEINBERG: And it would be my intent  
25 here to put this over for a couple of weeks, because I

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1 do want to get some clarification from the board, from  
2 the department, and from the administration regarding  
3 exactly what is the proper standard, and how is it  
4 sought to be applied, and what sort of training, in  
5 fact, do board members receive when it comes to  
6 interpreting the law. I mean, it may not be completely  
7 analogous, but there is a difference between  
8 preponderance of the evidence and clear and convincing  
9 evidence, or preponderance of the evidence and  
10 reasonable doubt. These words do, in fact, have  
11 meaning.

12 MS. CHRONES: Yes, they do.

13 CHAIRMAN STEINBERG: And I'm just a little bit  
14 uncertain -- not about you in particular, but about the  
15 standard that you are applying, whether by your own sort  
16 of judgment, or whether this is an across-the-board  
17 Board standard, and what it really means, if anything.

18 So we will bring your confirmation up for a  
19 vote in a couple of weeks. And in the meantime, we will  
20 seek to clarify some of the questions that we asked here  
21 today. All right?

22 MS. CHRONES: Okay. Thank you. Thank you,  
23 Senators.

24 CHAIRMAN STEINBERG: Thank you very much.  
25 Appreciate it.

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1 Let's take a 15-minute break, or a 10-minute  
2 break.  
3 (Recess taken.)  
4 CHAIRMAN STEINBERG: All right. We're back in  
5 session.  
6 Before we call the next nominee, I would like  
7 to take up file item three, a rule waiver request, in  
8 addition to this walk-on, which is to add 25 bills to  
9 the suspense calendar for tomorrow.  
10 SENATOR AANESTAD: So moved.  
11 CHAIRMAN STEINBERG: Moved by Senator Aanestad.  
12 Please call the roll.  
13 MS. BROWN: Senator Cedillo.  
14 Dutton.  
15 Oropeza.  
16 SENATOR OROPEZA: Aye.  
17 MS. BROWN: Oropeza aye.  
18 Aanestad.  
19 SENATOR AANESTAD: Aye.  
20 MS. BROWN: Aanestad aye.  
21 Steinberg.  
22 CHAIRMAN STEINBERG: Aye.  
23 MS. BROWN: Steinberg aye.  
24 CHAIRMAN STEINBERG: We can leave the roll open  
25 for Senator Cedillo to add on to these issues.

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1 All right. Let me call up Douglas S. Drummond  
2 as a member of Board of Parole Hearings.  
3 Mr. Drummond, welcome to you, sir.  
4 MR. DRUMMOND: Thank you, sir.  
5 CHAIRMAN STEINBERG: Once again, Mr. Drummond,  
6 I want to avail you of the opportunity to introduce any  
7 special guests, family members, et cetera, that you  
8 might have in the audience today.  
9 MR. DRUMMOND: We are expectant grandparents,  
10 and my wife is returning from our kids' home in Texas  
11 today, so she could not be here.  
12 CHAIRMAN STEINBERG: She's where she should be.  
13 Very good. Congratulations.  
14 I want to avail you of the opportunity first to  
15 make an opening statement, and I have some questions and  
16 other Members have questions as well.  
17 MR. DRUMMOND: Thank you.  
18 Honorable Members of the Senate, I would like  
19 to express my appreciation for having been allowed to  
20 serve as commissioner of the Board of Parole Hearings  
21 for the past ten months. This period has been among the  
22 most interesting of my life. I believe my diverse  
23 background and experiences prepared me for this role.  
24 Before answering your questions today, I would  
25 like to address an issue that came up yesterday during

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1 my meetings with some of you. Sixteen years ago, I made  
2 statements about the gay and lesbian community that I  
3 regret. I publicly apologized and voted to censure  
4 myself as a member of the Long Beach City Council.  
5 During the past 16 years, I tried to make  
6 amends for my comments to my community, both in words  
7 and in actions. Whether it is me or a life-term  
8 prisoner, when we make mistakes, we must first  
9 acknowledge they're wrong and demonstrate actions that  
10 make the appropriate amends, a second chance, if you  
11 will.  
12 I hope that I've been able to right this wrong  
13 and carry a message of acceptance, firmness, fairness,  
14 and openness.  
15 I welcome your questions at this time.  
16 CHAIRMAN STEINBERG: Thank you very much.  
17 I'm going to lead off with the same line of  
18 questioning about some substantive issues relating to  
19 the job, and then I'm going to turn it over to  
20 Senator Oropeza.  
21 This question that I raised -- I'm sorry.  
22 SENATOR OROPEZA: No.  
23 CHAIRMAN STEINBERG: Okay.  
24 The question that I raised with Ms. Chrones  
25 regarding the applicable standard for determining

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1 whether a so-called lifer is suitable for parole, you --  
2 your view on that subject, Mr. Drummond.  
3 Is there a difference between denying parole  
4 based upon a present risk of recidivism versus -- versus  
5 denying parole based upon an unreasonable risk of  
6 recidivism?  
7 MR. DRUMMOND: Senator, what happened was that  
8 in August, the California Supreme Court came down with  
9 two cases, *Lawrence* and *Shaputis*, and in those they  
10 refined the terminology to point to current risk of  
11 dangerousness. And that's what we're responding to, and  
12 that's how our training proceeded following those two  
13 cases. And it's been a current risk of dangerousness  
14 ever since that time.  
15 CHAIRMAN STEINBERG: Okay. So this is a little  
16 different than Ms. Chrones who said that she did not see  
17 a difference, that essentially -- my words, not yours --  
18 that "current risk" essentially meant "unreasonable  
19 risk."  
20 MR. DRUMMOND: Exactly, sir.  
21 CHAIRMAN STEINBERG: But you're saying that  
22 there's a distinct difference based upon some  
23 August 2008 Supreme Court cases. And how would you  
24 describe that difference in terms of real life and how  
25 you judge the cases?

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1 MR. DRUMMOND: I believe that the court's  
2 interpretation was such that we should focus on the  
3 current risk of dangerousness. That was clearly the  
4 guideline that came down from the court, and that's  
5 where our focus remains today.

6 CHAIRMAN STEINBERG: What is the difference  
7 between "current risk" and "unreasonable risk" as stated  
8 in Title 15 of the code?

9 MR. DRUMMOND: Well, Title 15 was that law  
10 interpreted by the court decisions. When the California  
11 Supreme Court looked at *Lawrence* and *Shaputis*, they  
12 looked at Title 15 and said it is really a current risk  
13 of dangerousness that we should be examining, not  
14 unreasonable. Current.

15 CHAIRMAN STEINBERG: What I want to get at, and  
16 I know you're trying to help in answering the questions,  
17 but in a practical sense, in a practical sense, what is  
18 the difference?

19 MR. DRUMMOND: I don't think there is any  
20 difference, sir. I think it's synonymous.

21 CHAIRMAN STEINBERG: Okay. So then you go back  
22 to Ms. Chrones's interpretation as well.

23 MR. DRUMMOND: Yes.

24 CHAIRMAN STEINBERG: Do you interpret the  
25 standard to mean that if an inmate poses any risk, that

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1 they're unsuitable for parole?

2 MR. DRUMMOND: No.

3 CHAIRMAN STEINBERG: Why not?

4 MR. DRUMMOND: Part of my background is  
5 criminology -- a great deal. I earned a doctorate. And  
6 Dr. Robert Carter at USC in the 1970, looked at  
7 recidivism very carefully, and he looked at life inmates  
8 at that time. And one of the problems is that you can  
9 never be confident, examining a population of inmates,  
10 that there will not be recidivism.

11 He had examples whereby 99 of 100 would be  
12 unsuccessful on parole, and another example where 99 of  
13 100 would be successful on parole, and the puzzle was in  
14 both cases, carefully defined, that we could not predict  
15 the one in either case. So there is always a risk.

16 So it comes down to me, in examining all of the  
17 suitability factors, that we have to do our best, as  
18 commissioners working with human beings, to select those  
19 that we are confident would be successful.

20 CHAIRMAN STEINBERG: Thank you.

21 Senator Oropeza.

22 SENATOR OROPEZA: Thank you very much,  
23 Mr. Chair.

24 Mr. Drummond, appreciate your coming by to  
25 visit yesterday, and I think it's appropriate for me,

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1 for the record, to note that you and I have known each  
2 other a very long time.

3 MR. DRUMMOND: Yes.

4 SENATOR OROPEZA: Indeed, we served together on  
5 the City Council in Long Beach for a number of years.

6 MR. DRUMMOND: Yes.

7 SENATOR OROPEZA: So this is not an easy line  
8 of questioning that I'm going to pursue, but I believe  
9 it's a necessary line of questioning due to the kind of  
10 job that you're applying for here. You're passing  
11 judgment on other people on whether or not parole is  
12 appropriate for them, and so any ways in which bias  
13 or -- well, I'll just leave it at bias -- bias may come  
14 into the picture in terms of your judgments, that is  
15 something that I think ought to be brought into the  
16 light of day and have the light and the sunshine placed  
17 on it.

18 So I'm going to begin by reading some quotes  
19 from the *Los Angeles Times* that come out of an incident,  
20 and the -- I think the quotes will speak for themselves.  
21 On the Council floor -- excuse me -- not on the Council  
22 floor. These activities occurred at a public event, but  
23 it was not a public organization. It was a private  
24 organization that you were speaking at. And here are  
25 your remarks: Quote, "Do you know why I don't worry

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1 about gay activity? I'm going to give you a clue. So  
2 far, in San Francisco, over 10,000 have died. In Long  
3 Beach, over 1,000 have died. I'm serious. You know,  
4 you can't go into denial on this.

5 "He adds, quote, 'I have no respect for Fidel  
6 Castro except that he did one thing. He isolated his  
7 AIDS population, and, as a result, Cuba has not had the  
8 spread that we have had.'

9 "He further goes on to say, 'Let's face it.  
10 Let's be fundamental. They don't reproduce.'"

11 And, finally, a remark also attributed to you,  
12 Mr. Drummond. "Let's face it. Let's think about this  
13 for a moment. How do we deal with it short of killing  
14 them?"

15 As an elected official -- You were an elected  
16 official at the time that you uttered these remarks; is  
17 that correct?

18 MR. DRUMMOND: Yes.

19 SENATOR OROPEZA: As an elected official, why  
20 did you say this?

21 MR. DRUMMOND: I'll tell you what happened  
22 specifically. This was a private event, as you said. I  
23 spoke. I gave a speech. Following the speech, I was on  
24 the microphone, the questions were coming from the  
25 audience. My speech had nothing to do with the gay and

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1 lesbian community. The two persons asking those  
2 questions were seated side by side, and they aimed the  
3 questions one after another at me, and I became very  
4 cynical, and I said awful things, and I apologized.  
5 The lead person of those two got the tape and  
6 carried it away. And, you see, since it was not on  
7 microphone, the questions from the audience were not on  
8 the audio, on the recording, so he spliced it all  
9 together making it appear as a speech. And that was the  
10 story.  
11 And I apologize. I should never have become  
12 cynical, but I had -- I said things that were absolutely  
13 unacceptable.  
14 SENATOR OROPEZA: So the reason why -- Just to  
15 be sure that I'm clear, the reason why you said these  
16 things was because you had become cynical at -- due to  
17 questions from the audience?  
18 MR. DRUMMOND: That's true.  
19 SENATOR OROPEZA: All right. Can you cite any  
20 specific evidence that you have that you can -- that  
21 demonstrate that you have changed? You indicated you  
22 changed your beliefs. Can you cite any specific  
23 evidence to that effect?  
24 MR. DRUMMOND: I have letters from the gay and  
25 lesbian community in Long Beach -- I believe they're

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1 before you -- and among those is a letter from the major  
2 gay and lesbian association in Long Beach, a letter  
3 supportive of this appointment.  
4 I have another letter from the owner of the  
5 principal gay and lesbian nightclub in Long Beach, and a  
6 third one from a person from a small organization in the  
7 gay and lesbian community.  
8 SENATOR OROPEZA: And so that is the evidence  
9 that you provide relative to your -- that you --  
10 This is how you demonstrate that you have  
11 changed or had a change of heart?  
12 MR. DRUMMOND: I have slowly and purposefully  
13 tried to build bridges back in that community, because  
14 my words were very disrespectful and wrong.  
15 SENATOR OROPEZA: And how have you done that?  
16 MR. DRUMMOND: Showing my friendship. I have  
17 written checks to support it. I have ridden in the Gay  
18 Pride Parade in Long Beach. I have exhibited my  
19 support.  
20 SENATOR OROPEZA: When you rode in the Gay  
21 Pride Parade, were you running for mayor?  
22 MR. DRUMMOND: Yes, I was.  
23 SENATOR OROPEZA: When you attended the  
24 fundraiser, were you also running for mayor?  
25 MR. DRUMMOND: Yes, I was. No, no. I was not.

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1 I did before and after. Absolutely.  
2 SENATOR OROPEZA: All right. Okay.  
3 MR. DRUMMOND: As recently as two months ago.  
4 SENATOR OROPEZA: Okay. Two months ago. Do  
5 you want to sort of pin that down a little more for me?  
6 MR. DRUMMOND: It was a fundraiser in behalf of  
7 gay marriage, and I attended and wrote a check.  
8 SENATOR OROPEZA: When was it?  
9 MR. DRUMMOND: Probably two months ago. I'd  
10 have to look at my calendar.  
11 SENATOR OROPEZA: Do you have your calendar  
12 with you?  
13 MR. DRUMMOND: Yes, I do. I wish I had my  
14 checkbook. It would be more accurate.  
15 SENATOR OROPEZA: Pardon me?  
16 MR. DRUMMOND: I wish I had my checkbook. It  
17 would be more accurate.  
18 SENATOR AANESTAD: Senator Oropeza, what is  
19 your point?  
20 SENATOR OROPEZA: Trust me. I do have a point.  
21 It has to do with the timing of these activities which  
22 Mr. Drummond is claiming are his demonstration of a  
23 change of heart. And my question on this one is: If it  
24 was a couple of months ago and not six, eight, or ten  
25 months ago, then it falls within the time period that

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1 Mr. Drummond would be aware that he was coming before  
2 this body for approval, and that might in some way  
3 influence a decision to do one thing or another.  
4 MR. DRUMMOND: I do not have an entry in my  
5 calendar, but I would be happy to get back to you later,  
6 because there were a number of checks written over a  
7 period of time.  
8 SENATOR OROPEZA: All right.  
9 The Board of Parole Hearings -- excuse me. No.  
10 I'm not going to go there.  
11 Is it true that Long Beach citizens asked for  
12 your resignation because of your remarks?  
13 MR. DRUMMOND: Yes.  
14 SENATOR OROPEZA: And is it true that years --  
15 several years later when another councilmember was being  
16 considered for censure based on his equating  
17 homosexuality with, and I'm quoting, "bestiality,  
18 pedophilia, necrophilia, rape, and incest," and there  
19 are others, that you seconded the motion to dispose of  
20 the matter at the City Council without taking any  
21 action?  
22 MR. DRUMMOND: I can't recall.  
23 SENATOR OROPEZA: Well, I can assure you that  
24 we have the transcripts, and we'll be happy to show that  
25 to you. Maybe it will refresh you.

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1 But you did, in fact, second the motion to  
2 dispose of the matter without taking action. And this  
3 was, as I said, several years after the initial  
4 incident.  
5 (To Mr. Hughes): If you find it you can share  
6 it with Mr. Drummond.  
7 We'll be happy to share it with you sometime  
8 today, if you have any questions.  
9 CHAIRMAN STEINBERG: Take the time to find it.  
10 Get it done.  
11 SENATOR OROPEZA: Okay. All right.  
12 Okay. I'll read it, and then I'll share it  
13 with you.  
14 MR. DRUMMOND: Okay.  
15 SENATOR OROPEZA: "Moved by Donalan, seconded  
16 by Councilmember Drummond that the communication from  
17 Senator -- from Assemblyman" -- no --  
18 MR. HUGHES: Councilman.  
19 SENATOR OROPEZA: "-- Councilman Alan  
20 Lowenthal" -- I was thinking of his other title -- "on  
21 second district regarding a response to the June 11th  
22 statements by Councilmember Jerry Schultz be received  
23 and filed."  
24 And this was, as I said, a similar scenario to  
25 your scenario. However, you seconded the motion to

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1 receive and file.  
2 Go ahead and give that to him and mark this  
3 spot here (indicating).  
4 MR. DRUMMOND: I'm fine. That is to receive  
5 and file.  
6 SENATOR OROPEZA: Yeah, receive and file, which  
7 is just to take no action, no censure as -- what the  
8 page indicates.  
9 MR. DRUMMOND: I want to point out that it was  
10 not a vote no on refusing to censure. It was to receive  
11 and file, the second.  
12 SENATOR OROPEZA: Right, right. So it is  
13 different in that you didn't vote against censure. You  
14 voted to not deal with the matter at all.  
15 MR. DRUMMOND: To receive and file.  
16 SENATOR OROPEZA: Receive and file, which is by  
17 *Roberts Rules of Order*, a way of disposing of an item  
18 without taking any action on it. Am I correct?  
19 MR. DRUMMOND: If you say so.  
20 SENATOR OROPEZA: You don't know that,  
21 Mr. Drummond?  
22 MR. DRUMMOND: No, no. But if you say so, I'll  
23 accept it.  
24 SENATOR OROPEZA: All right. Because you were  
25 on the Council a long time.

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1 MR. DRUMMOND: Yes, I was.  
2 SENATOR OROPEZA: Are there any rules that you  
3 operate by on the board?  
4 CHAIRMAN STEINBERG: I think it's clear. Move  
5 on to the next -- I think it's clear "receive and file"  
6 means there was no actual action taken. That's what it  
7 is.  
8 SENATOR OROPEZA: All right. I'm going to read  
9 excerpts from the newspapers and give you the  
10 opportunity to respond, if you would like.  
11 "When some members of the audience argued that  
12 the gay community is making political inroads, Drummond  
13 responded, quote, 'Let's face it. Let's think about  
14 this for a moment. How do we deal with it short of  
15 killing them?'"  
16 I would suggest that if that was a joke, it  
17 wasn't funny.  
18 MR. DRUMMOND: I think that that has to do with  
19 the earlier remarks made. That goes back -- That's the  
20 quote from the earlier remarks made.  
21 SENATOR OROPEZA: So you don't want to comment?  
22 MR. DRUMMOND: I was wrong. It was awful. I  
23 apologize. I really do. It was awful.  
24 SENATOR OROPEZA: And here's a second  
25 quotation, or this is a statement reported in the paper.

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1 And you can, you know, deny it or affirm it.  
2 "He also said" --  
3 SENATOR AANESTAD: I'm sorry, Mr. Chair, but I  
4 have to object. The man is not on trial.  
5 You've made your point. He has stipulated that  
6 he has made a horrible mistake. You're crucifying him  
7 now, Senator Oropeza. You have proved your point. You  
8 don't need to say anymore except maybe read the letter  
9 from the gay and lesbian community sent just a few weeks  
10 ago counterming everything that you have attempted to  
11 do to destroy his character.  
12 CHAIRMAN STEINBERG: Senator Aanestad, we'll  
13 keep order here. First of all, we go through the Chair.  
14 SENATOR AANESTAD: Correct.  
15 CHAIRMAN STEINBERG: Secondly, every Member  
16 will have the opportunity to question and to make  
17 comments.  
18 Third, while I appreciate and agree that the  
19 subject matter and the questioning is uncomfortable --  
20 we all feel it and respect Mr. Drummond as a person --  
21 this is a relevant line of questioning, because we are  
22 talking about, very simply put, whether or not any  
23 individual before the confirmation has a bias. That's  
24 the question we're trying to explore here.  
25 And so I move it along as -- to ensure that

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1 nothing is repetitive, and Senator Oropeza can proceed  
2 apace.  
3 SENATOR OROPEZA: Thank you very much.  
4 Here's the second -- Here's the second comment.  
5 "He also said he -- He also said he supported  
6 Cuba's policy of quarantining people with the disease.  
7 Drummond said it is pitiful that gays and lesbians are  
8 allowed to adopt children."  
9 Further, the final quotation, and this is in  
10 quotes, "Do you know why I don't worry about gay  
11 activity? I'm going to give you a clue. So far in  
12 San Francisco, over 10,000 have died. In Long Beach,  
13 over 1,000 have died. I'm serious. You know, you can't  
14 go into denial about these things."  
15 Would you like to make any comment on those  
16 remarks?  
17 MR. DRUMMOND: Yes. When I went back and saw  
18 those remarks and thought about those remarks, I  
19 considered my action deplorable, and that's why I  
20 apologized to the gay community, and that's why to this  
21 day I'm still continuing to try to make amends.  
22 SENATOR OROPEZA: Mr. Drummond, why was it  
23 deplorable?  
24 MR. DRUMMOND: Because it was wrong.  
25 One of the first things I asked myself after

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1 that -- I had to go into an in-depth self-exploration,  
2 and I had the opportunity to meet with a young man who  
3 was gay who sat in my office on the 14th floor of City  
4 Hall, and he cried because his family ostracized him  
5 because of his sexual preference. That made me think of  
6 my own children, and that made me think that it was  
7 truly wrong. If something like that came about with my  
8 own family, I would love my children. That's number  
9 one.  
10 The second thing I looked at having to do with  
11 it was wondering why people were gay, and I came to the  
12 absolute conclusion that it was a biological  
13 circumstance, and it was beyond their control, and for  
14 their own purposes they were normal.  
15 And then I went on to look at myself and say  
16 I've always thought that this was a free society. What  
17 do we mean by "freedom"?  
18 Then I moved entirely over in that direction,  
19 and that's when I made my apologies. And I meant it.  
20 And I mean it today.  
21 SENATOR OROPEZA: Am I correct that you made  
22 your apology at the censure vote?  
23 MR. DRUMMOND: Sixteen years ago.  
24 SENATOR OROPEZA: And you apologized -- I have  
25 the quote. Shall we get the quote?

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1 You apologized. What did you apologize for?  
2 MR. DRUMMOND: I can't remember the direct  
3 quote. Perhaps you can hand it to me and refresh my  
4 mind.  
5 SENATOR OROPEZA: Okay. While we're looking  
6 for that, let me ask a couple more questions.  
7 Given the hostility, and I view it as hostile,  
8 the initial remarks, do you feel that the examples --  
9 and you haven't actually given many. You talked about  
10 writing checks. But I wondered about your --  
11 There's a public way that you as -- Let me ask  
12 this first: Is there a way that you, as a public  
13 figure, former councilmember, former mayor candidate,  
14 you know, known person -- Is there a way that you  
15 conveyed, other than writing checks, your belief system,  
16 you conveyed that to the people in the public who were  
17 devastated by your remarks?  
18 MR. DRUMMOND: I guess -- Yes, there is.  
19 I rode in the Gay Pride Parade. When I rode in  
20 the Gay Pride Parade, I was showing my respect to that  
21 community.  
22 This comes back to, really, in a way,  
23 suitability factors. Sixteen years later, you look at  
24 an inmate and say, "Over the last 16 years, I see  
25 there's no misconduct." What does that mean? That

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1 means there's no misconduct, and it also means that  
2 there's a change of heart. And I believe I've displayed  
3 that over these 16 years, and I really believe I've made  
4 enormous progress. I believe I was awfully wrong at the  
5 time, and I accept responsibility.  
6 SENATOR OROPEZA: As a public figure, how would  
7 we know that you had this inner experience that changed  
8 your point of view?  
9 MR. DRUMMOND: We have the same puzzle with  
10 inmates. How do we really know? I know. I know in my  
11 heart, and I hope that you get the message. I really  
12 do.  
13 SENATOR OROPEZA: So you say that it is -- You  
14 mentioned now in terms of the inmates. Can you  
15 elaborate a little? I'm not quite sure I understand  
16 what you're getting at there.  
17 MR. DRUMMOND: We have inmates coming into  
18 custody that have done -- They're all life crime people  
19 for us, so it's either murder or some very important  
20 thing. And when they come in, most usually they're in  
21 denial, and that changes over a great number of years.  
22 After they accept responsibility for their offense, and  
23 after they display that they've had a long period of  
24 time without relevant discipline -- Now, for example, if  
25 the crime involved spousal abuse that was felonious, or

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1 perhaps even murder, and they were under the influence  
2 of alcohol at the time, and then you see their conduct  
3 in custody of continuing to get in fights, and then in  
4 addition to that you see that they're drinking pruno,  
5 the inmate-manufactured alcohol, and this happens over a  
6 great period of time, we're looking at that to gauge  
7 change.

8 I ask you to look at my behavior ever since  
9 this incident 16 years ago to evaluate my change and see  
10 if you can find a case where I have been opposed to the  
11 gay and lesbian community.

12 SENATOR OROPEZA: Well, I'm going to mention a  
13 few of them right now.

14 Mr. Drummond, I want to be sure that you  
15 understand that this is not something that I'm  
16 comfortable and happy about, but I feel, you know, a  
17 duty to make -- make clear to the public what -- who you  
18 are on the record, okay, on the record. You can  
19 describe your inner workings or your inner thoughts, but  
20 I want to point to the record and tell you why I am very  
21 concerned about what you have cited, writing the checks,  
22 attending the Gay Pride Parade, and you have already  
23 mentioned that you were running for mayor when you did  
24 that.

25 MR. DRUMMOND: Yes.

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1 candidate. I don't recall. And I certainly do not  
2 believe that my vote had anything to do with her sexual  
3 orientation at the time. I deny that.

4 SENATOR OROPEZA: All right. Okay. Let me  
5 continue, then, with these other items.

6 You voted against the adoption of a domestic  
7 partner ordinance not just once but several times --

8 MR. DRUMMOND: And I want to address that.  
9 Very clearly on the record we had an MOU with the Long  
10 Beach City Employees Union at that time that before we  
11 brought anything back to change our insurance system, we  
12 would first negotiate with them. That was under the  
13 Meyers-Milias-Brown Act, and this move to take it  
14 directly to the Council was in defiance of that act, and  
15 that's why I voted that way.

16 SENATOR OROPEZA: Well, I have to say that you  
17 currently needed two senators who served with you both,  
18 actually one of them made the motion. That was not me.  
19 And the other supported the motion.

20 MR. DRUMMOND: But why would you indict me for  
21 that when you don't know what was in my mind, Senator?

22 SENATOR OROPEZA: Because the -- Look, all I'm  
23 pointing out here are some evidence in the record about  
24 biased decisions. Whatever your thought process was, it  
25 was your thought process, okay? But there is a pattern

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1 SENATOR OROPEZA: You also -- After comments  
2 were made, you voted against needle exchange programs.  
3 You said you are for quarantining people.

4 MR. DRUMMOND: Against what?

5 SENATOR OROPEZA: Needle exchange. You voted  
6 against the needle exchange program.

7 CHAIRMAN STEINBERG: What year?

8 SENATOR OROPEZA: He was on City Council.

9 MR. DRUMMOND: What -- what --

10 SENATOR OROPEZA: It was sometime in the period  
11 of his City Council tenure, which was concluded in '98.

12 MR. DRUMMOND: I left in 1998.

13 SENATOR OROPEZA: Let me point these things  
14 out. I'll just read them without commentary.

15 You said you are for quarantining people. You  
16 voted against Gerri Schipske, an openly -- an open  
17 lesbian woman appointee to the CSU and College  
18 Headquarters Joint Powers Authority, you voted against  
19 the adoption --

20 MR. DRUMMOND: Wait, wait, wait. I don't vote  
21 on someone going to the state university authority.

22 SENATOR OROPEZA: This is a joint powers  
23 authority with the city and the CSU headquarters, and,  
24 yes, you did vote.

25 MR. DRUMMOND: It may be she was a gay

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1 here, which I'm trying to describe to you, of voting in  
2 ways which are homophobic. And as an elected official,  
3 you know, we live and die by our records, and you're not  
4 as fortunate as some of the other appointees that we  
5 see, because you do have a public record, and you have  
6 to be held accountable for it.

7 So I'll just quickly move on to the rest of  
8 them, Mr. Chair.

9 You voted against the adoption of -- I  
10 mentioned that already. You voted against censuring a  
11 fellow member who equated homosexuality with  
12 pedophilia -- I already mentioned that.

13 And you have not established, until you ran for  
14 mayor and were appointed by the governor, a track record  
15 in terms of public activities that you supported, like  
16 the Gay Pride Parade. In addition, we scoured, as part  
17 of the background check, newspapers and other written  
18 materials to find one incident where you were publicly  
19 on the record, with the exception of the censure, all  
20 right, because you didn't make the change -- Well, I  
21 don't think you made your whole change in your  
22 philosophy within the period of time of the censure,  
23 because that was, like, a week.

24 So I guess what I'm saying is that I think that  
25 demonstrating those beliefs requires some kind of public

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1 action on the part of those who are in the public eye,  
2 and I have not been able to find one written document of  
3 any kind that clarifies -- or that quotes you, or even  
4 alludes in writing in the papers, that you have had --  
5 that you have admitted and said that you have had a  
6 change in your point of view relative to homosexuality.  
7 SENATOR AANESTAD: Here it is. We have it in  
8 the file.  
9 CHAIRMAN STEINBERG: I'm going to turn it over  
10 to Senator Aanestad in a moment.  
11 SENATOR OROPEZA: Okay. All right. I'm almost  
12 done.  
13 I would like to share with you, Mr. Drummond,  
14 that the entire gay and lesbian community of Long Beach  
15 is not supportive of your candidacy for this position.  
16 There are letters that were circulated from a number of  
17 individuals from the community who are not supportive.  
18 So there's no consensus, I guess is what I'm saying, out  
19 of the community. It's up to us to make that call.  
20 Finally, I would say that the reason why this  
21 is important is that the board, in this case, is making  
22 life-and-death decisions. It's the only -- The only  
23 record that we have are the transcripts of what occurs  
24 in those hearings. But what we do have is the  
25 opportunity, through the confirmation process, to bring

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1 to light what a person is about.  
2 And because you have, in the -- the  
3 documentation that I have been able to find, not  
4 established a -- any evidence of change, I have to say  
5 that I am hard pressed and am not going to be able to  
6 support your nomination.  
7 The other piece of this is -- Let's assume for  
8 a moment that none of this were true except for the  
9 stuff that was reported. I mean, you've denied certain  
10 things and said it was misunderstood and that kind of  
11 thing. Let's concede those misunderstandings. The fact  
12 of the matter is that you made those judgments. You  
13 made a judgment as an elected official to defame a group  
14 of people. How would this feel if some of these quotes,  
15 we took out "homosexual" and inserted  
16 "Mexican-American," or "African-American," or "Jew"?  
17 These are serious matters, sir, and they're  
18 ones you can't brush under the rug. God knows we've  
19 done that in the past, and where has it gotten us? So  
20 in all candor and in all respect to my colleagues for  
21 their time, I feel very strongly that you should not be  
22 put in a position where you are passing judgment,  
23 perhaps on gay or lesbian inmates, or making judgments  
24 about gay- or lesbian-involved crimes that you're seated  
25 to adjudicate as part of that process.

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1 With that, I will yield to the Chair.  
2 CHAIRMAN STEINBERG: Thank you.  
3 SENATOR OROPEZA: And I thank you very much for  
4 your time.  
5 CHAIRMAN STEINBERG: Thank you, Senator  
6 Oropeza.  
7 Senator Aanestad.  
8 SENATOR AANESTAD: Mr. Drummond, I, too, have  
9 voted against needle exchange programs. I, too, have  
10 voted against people who happen to be gay or lesbian for  
11 certain positions, not necessarily because they were gay  
12 or lesbian, but because they weren't the right person  
13 for the job. I have never written a check to a gay and  
14 lesbian organization in my life, and I've never ridden  
15 in a gay parade. That makes me a homophobic, according  
16 to some members on this dais.  
17 That kind of thinking has no place, as far as  
18 I'm concerned, when we're evaluating somebody who has  
19 expressed remorse over an incident in his life. And I  
20 think it very convenient that after the last 45 minutes,  
21 what we didn't hear is the letter from the Gay and  
22 Lesbian Center in Greater Long Beach, the executive  
23 director who writes, "I believe that people are capable  
24 of growth and change, and that this typically occurs  
25 during relationships. This is definitely true for

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1 Doug Drummond. I am convinced that whatever comments  
2 were expressed in the past are in the past, and they are  
3 not his thoughts or beliefs today.  
4 "Doug Drummond's record is admirable. His  
5 intentions are true. I endorse him with full  
6 confidence. And if you have any questions," she gives  
7 her telephone number.  
8 The fact of the matter is that we expect our  
9 prisoners to express remorse and to demonstrate that  
10 they have had a change in their attitude and for the  
11 actions that caused them to be put in the position that  
12 they have been in the past, and yet we have a member of  
13 this dais who can't accept that from somebody who has  
14 just done that publicly. I find that despicable. I'm  
15 sorry you had to go through this.  
16 CHAIRMAN STEINBERG: I'm going to take the  
17 gavel now.  
18 You know, Senator Aanestad, I have great  
19 respect for you and for the way you express yourself. I  
20 would disagree with your characterization of Senator  
21 Oropeza's comments and her questioning. It was painful.  
22 It was difficult. But it was, in fact, appropriate.  
23 And let's remember for a moment here, we are  
24 not here to judge Mr. Drummond's life. That's not our  
25 role here. That's not our role. By all accounts, he

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1 has made significant civic contributions in his life.  
2 The question before us is whether or not he  
3 should be confirmed to this particular job that,  
4 frankly, involves a whole lot of discretion in a closed  
5 environment. And it is unfortunate that in most  
6 instances with the private-sector employer, for example,  
7 who might interview Mr. Drummond or anybody for a  
8 private-sector job and explore all these issues  
9 privately and then decide whether or not to offer the  
10 job to somebody, that would be a perfectly acceptable  
11 and probably comfortable and necessary exchange.

12 What is hard and awkward here is that this is a  
13 public job, and this is, in fact, a public setting. So  
14 I appreciate and respect the discomfort, because as I'm  
15 sitting up here, I feel it as well; and yet it is  
16 relevant and appropriate to explore bias, and that's all  
17 Senator Oropeza, in my view, was doing. And  
18 Mr. Drummond had and will continue to have, over the  
19 next number of minutes, the opportunity to, in fact,  
20 respond.

21 So having said that, I want to ask a question  
22 on this subject matter, because I approach it similarly  
23 to Senator Oropeza in the sense that I do ask myself --  
24 I do recognize two things. Number one, that people's  
25 views on homosexuality have changed over the course

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1 of -- over the years, and yet this isn't just about  
2 one's views on homosexuality. It is about -- It is  
3 about a set of comments and whether or not those  
4 comments -- and whether or not the remorse expressed,  
5 which I believe is genuine, is sufficient to override  
6 the concern. Because if you did -- If you did replace  
7 "gay," "lesbian," "homosexual" with "Latino,"  
8 "African-American," "Jew," as Senator Oropeza said, I  
9 think it is fair to say that the chambers might be even  
10 fuller here with people saying you can't -- that is a  
11 disqualifier. It's a disqualifier from a high public  
12 position.

13 If I ran for office -- I have run for office.  
14 If I ran for office and those sorts -- and I said those  
15 sorts of things in my background, they would be, in  
16 fact, relevant to whether or not the people believed I  
17 was suitable for the job.

18 However, where I take it a slight bit in a  
19 different direction would be to say I do believe people  
20 are genuinely capable of change. People are genuinely  
21 capable of change, and I've seen it. I have seen it in  
22 my own community. I've seen a City Council member, now  
23 a board of supervisor, I think back to 1990, he voted  
24 against all the domestic partner benefits. By 2006 and  
25 2007, he's one of the great champions of the gay and

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1 lesbian community. And, in part, he was the victim of a  
2 fire-bomb incident at his home. Asian-American. So  
3 it's pretty evident to all of us that he sort of took it  
4 in.

5 So as we look at this difficult situation,  
6 again, recognizing that we're not judging Mr. Drummond's  
7 life -- it's not what we are doing here -- I want to  
8 focus on the question of remorse and what you have  
9 learned in this, because I think Senator Oropeza raises  
10 some key questions, because you only do cite, sir, with  
11 respect, a couple of public -- public outreaches, some  
12 in the midst of a political campaign. And I know if it  
13 were me and I were embarrassed by something I said or  
14 did, and I have been embarrassed by things I said or  
15 did, daily, sometimes, that, you know, my reaction would  
16 be to do everything I could to show people that I had  
17 changed.

18 And this is the one that bothers me that I need  
19 to ask you about, and it relates to these comments by  
20 Councilmember Jerry Schultz. Now, remember, this is  
21 three years later. This is three years after 1993,  
22 after the censure, after your public apology, after your  
23 recognition that, in fact, what you said was wrong and  
24 not acceptable. And Mr. Schultz, as I understand it,  
25 went on and on on the record about -- equating

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1 homosexuality to bestiality, to necrophilia, all of the  
2 other words that, you know, are even hard to repeat.

3 And then what I have in front of me, which,  
4 Senator Oropeza, you didn't quite cite, is actually the  
5 transcript of how you responded in 1996. And I just  
6 want to read part of it, and then I want to ask you to  
7 respond. And I'll show you the statement as well so you  
8 can read other parts of it so you can be assured I'm not  
9 taking anything here out of context.

10 "The issue in which this event focused had to  
11 do with domestic partnerships. Same-sex marriage is a  
12 part of that issue. Sensitivities, incredible  
13 sensitivities, were awakened when Councilman Schultz  
14 spoke. He spoke plainly, and that's an American trait.  
15 Many people admire that trait. He spoke to the issues  
16 of morality. He described in dictionary terms sex acts  
17 practiced by some people. Doesn't mean all people.  
18 Doesn't mean all gays. Some people. And yet  
19 sensitivities cropped up.

20 "And then his discussion focused on the moral  
21 questions. Well, many people have strong religious  
22 beliefs, and they can't be brushed aside. And given  
23 that, the unasked was lying out there: What should be  
24 taught in schools? And many people were alarmed," and  
25 it goes on.

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1 So I'm sitting here listening to this, wanting  
2 to give you the benefit of the doubt, wanting to  
3 understand. And I put myself in the situation, and I  
4 say that if this -- after what I went through in 1993,  
5 this occurred again three years later and this  
6 Mr. Schultz, who I don't know, used those kinds of  
7 terms, again, "bestiality," "necrophilia," I mean,  
8 basically dehumanizing a group of people, and you not  
9 only didn't censure him or speak out against him but in  
10 fact sort of acknowledge that, my words, reasonable  
11 people can raise questions about these things, it -- I  
12 say, Okay. Well, then, the remorse really didn't take  
13 place over the first three years.

14 Now, I know it's 13 years since 1996, but this  
15 one bothers me. This one bothers me, because here was  
16 the first chance to respond to this other guy who  
17 repeated much of -- sort of the same vein of what you  
18 had said in '93, and then -- and this is how you  
19 responded.

20 So please respond to what I just put out.

21 MR. DRUMMOND: It was a long time ago, and the  
22 only thing I can imagine is I really have to say that  
23 Jerry Schultz is a friend of mine. What he said is  
24 wrong, and there's no doubt in my mind I was trying to  
25 soften it with those words. There's no doubt in my

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1 mind.

2 CHAIRMAN STEINBERG: Okay. Let's hear from  
3 witnesses in support, please.

4 Senator Lowenthal.

5 SENATOR LOWENTHAL: Yes. I was elected to the  
6 Long Beach City Council in 1992 and, actually, I think  
7 was one of the early on the Long Beach City Council in  
8 1992 and was both a spokes -- in many ways a  
9 spokesperson and advocate of the gay and lesbian  
10 community.

11 In 1993, I believe it was when Mr. Drummond,  
12 who was in the next seat over, the third district, I was  
13 the second district, made those poorly and horrible  
14 statements. I was the one that brought before the City  
15 Council the censure motion and went to Mr. Drummond  
16 about that before I brought it before the Council. He  
17 acknowledged that it was terrible statements that he  
18 made and that he would actually -- instead of fighting  
19 this publicly on the floor of the council -- would vote  
20 for the censure of himself and would speak about that,  
21 which he did.

22 In all the years that I've worked with him  
23 since, I do not see him as a bigoted person. I see him  
24 as a person who may have been ignorant of issues at that  
25 time but has taken a great deal of time and energy to

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1 learn the issues of all people. I respect him, and I  
2 can just say based on the skills that are needed for  
3 this confirmation, I support his confirmation. I think  
4 he'll make a fine person who will evaluate every case on  
5 its merits and will not bring prejudice or bigotry to  
6 the situation, and I urge you to support him.

7 CHAIRMAN STEINBERG: Thank you, Alan.

8 Are there other witnesses in support?

9 Are there witnesses in opposition?

10 MR. WARREN: My name is David Warren. I'm  
11 appearing on behalf of Taxpayers for Improving Public  
12 Safety. Originally, I planned on being mute, but there  
13 were two points raised during this discussion I would  
14 like to bring up.

15 But I would first like to comment our concern.  
16 In review of the transcripts, we found concern that in  
17 two of the cases, that denials were more politically or  
18 socially motivated for what we believed were qualified  
19 individuals who had received prior very short denials  
20 and were given three-year denials.

21 Again, it's a subjective analysis, and we  
22 recognize that, but there are two points I want to bring  
23 up. The first one is, I am a Jew. And I've known  
24 Mr. Drummond for quite a period of time in my prior life  
25 as a criminal defense attorney.

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1 My parents resided in Long Beach, and some  
2 juveniles decided to paint swastikas or burn swastikas  
3 into the lawn of our home in Long Beach. Mr. Drummond  
4 at that time was a supervisor at the Long Beach Police  
5 Department, and I can assure you he left no stone  
6 unturned to make sure that the juveniles responsible for  
7 that act, since my parents were both survivors, were  
8 brought to the appropriate authority. I do not believe  
9 for a moment that he has an anti-Semitic bone in his  
10 body, even though we've disagreed for years when I was  
11 working and at the Board of Parole Hearings.

12 Second, and I think this is more specific as to  
13 the discussion today, historically, the Long Beach  
14 Police Department, because of the large number of  
15 individuals from the naval facilities in the community  
16 were present, there was a terrific sense of bigotry  
17 against homosexuals in the community. I had to  
18 represent two individuals who were accused of murdering  
19 a sailor. They were badly treated by the Long Beach  
20 Police Department at the time. The nominee was  
21 responsible for the supervision of those officers. He  
22 made sure that the particular accused individuals were  
23 treated with the dignity and respect an accused was due  
24 regardless of their sexual orientation.

25 I had no idea -- I didn't know about his public

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1 comment. I only saw him in action, and he made sure  
2 that in the Long Beach Police Department, all  
3 individuals were treated the same.

4 Thank you very much.

5 CHAIRMAN STEINBERG: Are there other witnesses?

6 Mr. Miller, I just want to make sure you don't  
7 have to repeat everything you said the last time.

8 MR. MILLER: Yes, your Honor. I won't repeat  
9 anything. I just want to point out that the Committee  
10 may already know that a fairly high percentage of  
11 prisoners in our state prison system are gay and  
12 lesbian.

13 And, secondly, I have been personally  
14 present -- and I'll say both about Commissioner Drummond  
15 and Commissioner Gillingham -- at their hearings, and  
16 they're very respectful and thorough, very respectful to  
17 the subject and the attorney.

18 But one thing troubles me. I was at a hearing  
19 about six months ago, six to seven months ago, at which  
20 Commissioner Drummond was the commissioner. This  
21 particular inmate committed some crimes about 35 years  
22 earlier, had a sentence of seven years to life, and had  
23 an exemplary record, had four evaluations by four  
24 different psychologists that he currently poses a low,  
25 if any, further risk to public safety.

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1 Parole was denied by Commissioner Drummond  
2 because the inmate had two disciplinary violations,  
3 which were non-violent, in 35 years of incarceration,  
4 which were more than five years old, which involved the  
5 fact that he had some pornography in his cell. The  
6 department changed their rules regarding what an inmate  
7 can and cannot possess, and he had held on to these  
8 items. And I never knew why the parole would be denied  
9 on that basis after such overwhelming evidence of no  
10 current risk of public safety by four experts.

11 And I knew nothing about what Senator Oropeza  
12 stated today. I had no knowledge of that until today,  
13 but now that I've heard that and because I worked on  
14 this particular case, the thought comes into my mind, at  
15 least, of the possibility of some bias. My point is, if  
16 there's even an appearance of impropriety, if even  
17 there's the appearance of bias, it's something that the  
18 Committee should strongly consider. Thank you.

19 MR. DRUMMOND: Senator, may I?

20 CHAIRMAN STEINBERG: Of course. I just want to  
21 make sure there are -- Hold on, Mr. Drummond.

22 MR. DRUMMOND: I --

23 CHAIRMAN STEINBERG: Hold on, Mr. Drummond.

24 Are there other witnesses in support or  
25 opposition?

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1 Sir.

2 MR. DRUMMOND: Thank you. I clearly remember  
3 that case. That was a very important case. It was an  
4 amazing case to me because of history. It was a case  
5 involving the Chowchilla school bus kidnap.

6 And in this case, the inmate chose not to speak  
7 about the crime or the planning of the crime, which is  
8 certainly his right, and that compelled me to mine the  
9 data in search of information.

10 There was a peculiar aspect of this case in  
11 that it was 18 months in the planning process for this  
12 crime. In all of my years on the police department and  
13 in the study of criminal justice, I had never seen an  
14 18-month planning phase. And I was unable to question  
15 him about this phase.

16 I looked at the psychological evaluations, and  
17 they all looked at the normal expected areas, drug  
18 addiction, alcohol use, prior criminal record, abnormal  
19 mental problems. It went on and on in the standard  
20 sense, and there was nothing in the psychological  
21 evaluation that would give me help.

22 I then saw in the original probation report  
23 that there was a comment by the inmate's family  
24 attorney, and he attested that this young man would get  
25 crazy ideas in his head and couldn't get rid of the

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1 ideas. And then I saw the recent disciplinary problems.  
2 First, he was -- This was in a range of just a matter of  
3 weeks. He had pornographic literature in his cell, and  
4 that was not a serious disciplinary problem. It's  
5 what's called a 128A. And then just a few weeks later,  
6 the second time he was caught with the same kind of  
7 material. Now it was elevated to a 115. The third time  
8 he was caught with the same material, and I saw that  
9 this was evidence, in my opinion, that he had an idea in  
10 his mind and he just couldn't shake it.

11 And we were now to a point with the new Marsy's  
12 Law provisions, and the lowest denial I could give was  
13 three years. And when I gave the three-year denial, I  
14 explained that none of the psychological evaluations had  
15 explored those problems, and I'd like to see the  
16 psychologist focus in those areas. And that's what I  
17 did.

18 CHAIRMAN STEINBERG: Thank you, sir. Any other  
19 closing comments?

20 MR. DRUMMOND: Only to say I've been a housing-  
21 project kid in my life; I've been a paratrooper; I've  
22 been a police officer. I've seen IPB right up close --

23 CHAIRMAN STEINBERG: IPB?

24 MR. DRUMMOND: Intimate partner battery.  
25 -- and I've seen it when it was linked with

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1 alcohol to an abysmal level. Running a jail, I saw  
2 alcoholics that couldn't deal with their problems. I  
3 saw them continually go back to the bottle. I've  
4 learned so much, looking at these inmates that are life  
5 inmates, looking -- overlooking about 400 cases so far,  
6 and I solemnly promise to you that my entire commitment  
7 has been one of fundamental fairness. I want the rights  
8 of the inmate to be protected, I want the rights of the  
9 public to be protected, and I want to do a fair  
10 decision. And that's what I base all of my work on, and  
11 that's what I continue to base my work on.

12 Thank you for having heard me.

13 CHAIRMAN STEINBERG: Thank you very much,  
14 Mr. Drummond.

15 All right. Is there a motion on the floor?

16 SENATOR AANESTAD: Do you want to move him? So  
17 moved.

18 CHAIRMAN STEINBERG: Okay. I guess I just -- I  
19 want to put one more thing on the record here. I said  
20 it a moment ago, and I want to repeat it, because there  
21 are human beings involved here, right? This hearing,  
22 nor however this comes out, isn't a rendering of  
23 judgment on Mr. Drummond or any of these nominees'  
24 lives. It is not. It is a job interview. It just  
25 happens to be a public job interview with all of the

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1 awkwardness attendant in examining somebody's record,  
2 qualification, bias, et cetera, for the job.

3 Thank you.

4 Please call the roll.

5 MS. BROWN: Senator Cedillo.

6 Dutton.

7 Oropeza.

8 SENATOR OROPEZA: No.

9 MS. BROWN: Oropeza no.

10 Aanestad.

11 SENATOR AANESTAD: Aye.

12 MS. BROWN: Aanestad aye.

13 Steinberg.

14 CHAIRMAN STEINBERG: No.

15 MS. BROWN: Steinberg no.

16 CHAIRMAN STEINBERG: The vote stands at one to  
17 two. It will be on call. When the remaining Members  
18 return, we will lift the call.

19 I want to take five minutes, please.  
20 (Recess taken.)

21 CHAIRMAN STEINBERG: Back in session, please.

22 I would ask Ms. Hollis Gillingham please to  
23 come forward. Good afternoon.

24 MS. GILLINGHAM: Good afternoon.

25 CHAIRMAN STEINBERG: Ms. Gillingham, we had

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1 Senator Simitian introduce you earlier. Would you like  
2 to introduce anybody in the audience, family or special  
3 guest?

4 MS. GILLINGHAM: I would like to introduce my  
5 very patient and adoring husband of 42 years, Charles  
6 Gillingham.

7 CHAIRMAN STEINBERG: Welcome. Let's give him a  
8 standing ovation.

9 MS. GILLINGHAM: Very patient man, I must say.

10 CHAIRMAN STEINBERG: Nice to see you. Right.  
11 Very, very good.

12 Brief opening statement. We have a few  
13 questions for you.

14 MS. GILLINGHAM: Honorable Senators, thank you  
15 for having me here today. I have welcomed the  
16 opportunity to serve as a commissioner on the Board of  
17 Parole for the past nine months, and I come before you  
18 today to ask for your vote of confidence to continue my  
19 work as a commissioner on the Board of Parole Hearings.

20 I believe my training, education, and  
21 experience has prepared me for this position, and I look  
22 forward to continuing in this capacity.

23 Thank you, and I welcome your questions.

24 CHAIRMAN STEINBERG: Very good. Thank you.  
25 As you can see, issues of bias, if you will,

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1 are relevant to the inquiry. So I just want to ask you  
2 one. All right. And it's a simple, basic question.

3 Your husband, who you just introduced, was the  
4 former Santa Clara County Sheriff, and your son is an  
5 assistant district attorney.

6 MS. GILLINGHAM: Deputy district attorney.

7 CHAIRMAN STEINBERG: Deputy district attorney.  
8 Excuse me.

9 How do you keep yourself from siding with law  
10 enforcement and/or the district attorney in a given  
11 case?

12 MS. GILLINGHAM: Because of my background and  
13 experience. I have extensive experience in dependent  
14 matters of the court, investigating child abuse, molest,  
15 and neglect, and in that case the protection of the  
16 child is the most important thing, regardless of what  
17 the police say, the deputy district attorney says.

18 My history is one of working with diversion  
19 and -- in juvenile matters, and many times the police  
20 officers would cite a kid for burglary, petty theft, or  
21 what have you, and it was up to me to make the decision  
22 as to whether or not to have that juvenile enmeshed or  
23 penetrate the system further or not.

24 Many times I disagreed with the District  
25 Attorney's Office. We had one that overcharged all the

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1 time, and I did everything in my power to file, you  
2 know, less charges, or put the kid on an IS -- informal  
3 supervision, excuse me -- for six months.

4 So I have my own opinion. I weigh things the  
5 way I think is appropriate and fair and make a decision  
6 based on that. And they can have input, and it does not  
7 mean that I'm going to accept all of it as gospel.

8 CHAIRMAN STEINBERG: Fair enough. So you're  
9 not an attorney, correct?

10 MS. GILLINGHAM: No.

11 CHAIRMAN STEINBERG: Good for you. No.

12 MS. GILLINGHAM: We have trouble with that at  
13 our house.

14 CHAIRMAN STEINBERG: Right. So Mr. Drummond  
15 and Ms. Chrones talked about their understanding of  
16 Title 15, which specifically includes the term  
17 "unreasonable" when determining risk. And Mr. Drummond  
18 specifically cited the Supreme Court cases, which I have  
19 the relevant excerpt in front of me, in which the  
20 Supreme Court said, "... *The key is whether the*  
21 *identified facts are probative to the central issue of*  
22 *current dangerousness when considered in light of the*  
23 *full record before the board or the governor.*"

24 Have you been trained, taught, told, and/or  
25 how do you reconcile the "unreasonable" addition in

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1 Title 15 to the standard described by the California  
2 Supreme Court?

3 MS. GILLINGHAM: Well, I think they're not two  
4 separate issues. They're together. They're enmeshed  
5 together. And *Lawrence* clarified that current  
6 dangerousness is what makes an inmate a current risk or  
7 an unreasonable risk to public safety. So you put those  
8 two together. In other words, they're currently  
9 dangerous based on whatever institutional behavior,  
10 115s, murders in prison, and that sort of thing, and  
11 that as a consequence of being a current danger based on  
12 these suitability factors, say, of institutional  
13 maladjustment, if you would, makes them an unreasonable  
14 risk to public safety.

15 In other words, because they're a danger,  
16 they're an unreasonable risk, is what I'm trying to say.

17 CHAIRMAN STEINBERG: Okay. Wait. Because  
18 they're a current danger, they're an unreasonable risk?

19 MS. GILLINGHAM: They're a risk. That  
20 clarified the Title 15 and the Penal Code. That's our  
21 understanding.

22 CHAIRMAN STEINBERG: Is that -- I'm just  
23 curious whether or not the board staff or anybody has  
24 actually written an analysis, or an opinion, or a  
25 directive that that's how to reconcile the two terms?

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1 MS. GILLINGHAM: We've been trained extensively  
2 on some of these court hearings, case law, and the case  
3 law clarified that, I believe, the *Lawrence* decision and  
4 the *Shaputis*.

5 CHAIRMAN STEINBERG: And the what?

6 MS. GILLINGHAM: *Shaputis*. That is the case  
7 law that came along with the *Lawrence* case. And that  
8 was about August of '08. In other words, they married  
9 the two and clarified the Title 15.

10 CHAIRMAN STEINBERG: Okay. The issue of  
11 leadership. You've been in law enforcement in various  
12 capacities for a number of years, a deputy probation  
13 officer for 32 years. How much advocacy do you do with  
14 CDCR or the board about how to improve programs within  
15 our prisons?

16 MS. GILLINGHAM: Well, I'm a strong proponent  
17 of programming, and I found several that are very  
18 beneficial that I think -- because of what the inmates  
19 have told me. I asked them what programs have they been  
20 involved in and what impact it's had on them, and what  
21 was important to them, and how it affected them or  
22 hadn't, and I certainly understand in the present budget  
23 climate and the problems that we have with that, that  
24 some of these programs are -- may disappear for these  
25 inmates. But I'm a strong proponent of programs, and I

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1 refer the inmates to various programs.

2 As far as setting any policy or being able to  
3 bring in programs or what have you, I'm not in a  
4 position to be able to do that, but I'm certainly a  
5 strong proponent of programming.

6 CHAIRMAN STEINBERG: All right.

7 Questions from other Members. Senator Oropeza.

8 Okay. Let's hear from witnesses in support.  
9 Witnesses in opposition.

10 Hey, third time's a charm.

11 MR. MILLER: Thank you, your Honor.

12 I was present at one of Ms. Gillingham's  
13 hearings, and it was conducted extremely fairly.

14 There was a comment made earlier which pertains  
15 to all of these commissioners by one of the speakers,  
16 and it's crucial --

17 CHAIRMAN STEINBERG: Can you state your name  
18 for the record.

19 MR. MILLER: Donald Miller, I'm sorry, again.

20 And it's economics. It's estimated that it  
21 costs between 30 and \$35,000 a year to house an inmate  
22 in this state, but for these life prisoners who are  
23 getting older, there is more medical care required,  
24 probably closer to around 50,000.

25 We have in the system over 20,000 lifers, of

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1 whom about 5,000, and that's just an estimate from my  
2 experience, have had multiple hearings and been adjudged  
3 by the psychologists, who are hired by the board for the  
4 specific purpose to determine their risk of recidivism,  
5 to pose a low risk. We're talking about 200 to  
6 \$250 million a year to house inmates who pose no further  
7 risk to public safety. Two hundred million to  
8 \$250 million dollars per year to house inmates who are  
9 professionally evaluated to pose no further risk to  
10 public safety and that are kept in prison by  
11 commissioners stating that the psychologists are wrong.  
12 It's a completely arbitrary system, and as long as we  
13 have only law enforcement on the board, it's not going  
14 to stop. We're going to waste that money every year.

15 CHAIRMAN STEINBERG: Okay. Thank you. You  
16 made that point, I think, very, very well a couple  
17 times.

18 Okay. Anybody else in opposition?

19 Okay. Ms. Gillingham, you appear and I think  
20 you are very qualified for this position, like  
21 Ms. Chrones as well, but we aren't going to take a vote  
22 today. We're going to put it over for a week or two,  
23 because I do want to get just some clarification as a  
24 matter of policy in terms of this standard, because, as  
25 I said to Ms. Chrones earlier, you know, the standard

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1 does actually matter. And Title 15 may not be in  
2 conflict with the Supreme Court's decision, but I just  
3 think we want to make sure that all of the hearing  
4 officers, all the members of the Board of Parole, are  
5 applying a uniform, consistent standard, and that that's  
6 stated appropriately in the record and applied  
7 appropriately.

8 So we're going to put it over for a couple  
9 weeks. Okay?

10 MS. GILLINGHAM: Very good. Thank you.

11 CHAIRMAN STEINBERG: Thank you very much.  
12 Appreciate it.

13 Okay. Last but not least, Mr. Kane. Thank you  
14 for your patience.

15 MR. KANE: Thank you.

16 CHAIRMAN STEINBERG: Welcome, Mr. Kane. Once  
17 again, just as with the other nominees, if there's  
18 anyone you would like to introduce in the audience,  
19 family, special friend, please do so.

20 MR. KANE: I'd like to introduce my strongest  
21 supporter. Without her, I couldn't perform my job as a  
22 commissioner. On the personal side, a lot of us have  
23 family members who stay behind and do the hard work of  
24 looking after our families, looking after our  
25 households. In my case, looking after my aging parents.

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1 So I want to acknowledge the love of my life, the boss  
2 of the family, and the backbone of the family, my wife,  
3 Brandy Kane.

4 CHAIRMAN STEINBERG: Please stand up. Thank  
5 you. Welcome to you and thank you for your public  
6 service as well.

7 Sir, brief opening remarks.

8 MR. KANE: Thank you. Good afternoon,  
9 Mr. Chairman, Senators, and members of your staff. I  
10 would like to thank you for the opportunity to appear  
11 before you today. I have invested the last 30 years of  
12 my adult life in the protection of public safety.

13 I worked my way up in CDCR from a correctional  
14 officer to an associate director. I was involved in the  
15 change from the Department of Corrections to the  
16 Department of Corrections and Rehabilitation.

17 As a warden, I instituted many programs to  
18 assist inmates to transition back to society with  
19 educational, vocational, and self-help programs, with  
20 the goal to lower recidivism rates and end the cycle of  
21 violence.

22 As a commissioner, I now determine if these  
23 inmates have taken advantage of these program  
24 opportunities and are moving towards rehabilitation and  
25 becoming suitable for release back to the community.

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1 At this time, I would like to publicly  
2 acknowledge and thank my parents, my wife, and my  
3 children for their support and their sacrifices they  
4 have made and will continue to make throughout my  
5 career.

6 I am honored to have been appointed as a  
7 commissioner to serve the people of California in what I  
8 think is possibly one of the most challenging positions  
9 in state government.

10 Thank you, and I am open to any questions you  
11 may have.

12 CHAIRMAN STEINBERG: Thank you very much,  
13 Mr. Kane.

14 I do have a serious question which is different  
15 from some of the questions that we've asked the other  
16 nominees, and it relates to this: Back in July of 2007,  
17 the full Senate confirmed you as the associate director  
18 of the level two and three prisons.

19 MR. KANE: Yes, sir.

20 CHAIRMAN STEINBERG: And your confirmation took  
21 place at the end of the 12-month period, so you were  
22 confirmed. And in the course of the hearing you stated  
23 the following: "I would like to take part in making  
24 positive changes to this department to give back to CDCR  
25 what's been afforded to me." And then three months

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1 after your confirmation, you retired.  
2 MR. KANE: Yes, sir.  
3 CHAIRMAN STEINBERG: Full pension. And now,  
4 again, you are, you know, receiving in this current  
5 position a \$111,000 a year salary. And so why did you  
6 retire just a few months after your confirmation?  
7 MR. KANE: Well, sir, I made a fatal mistake of  
8 going to PERS for a -- as they call it, a class to set  
9 up retirement, a seminar. And in talking to the  
10 employees there, I found out, based on the fact that I  
11 had four years of state employment prior to joining  
12 CDCR, and I was at 29 years at safety pay, and that I  
13 was over the 50-year minimum for retirement, I was at  
14 the top of my salary. I was going to make more money  
15 being retired than working every day.  
16 CHAIRMAN STEINBERG: When did you go to that  
17 class? Was it after your confirmation or sometime  
18 before your confirmation?  
19 MR. KANE: I remember it after my confirmation,  
20 sir. After.  
21 CHAIRMAN STEINBERG: I'm sorry. You remember  
22 that it was probably after your confirmation?  
23 MR. KANE: After my confirmation.  
24 CHAIRMAN STEINBERG: I would like you, if you  
25 would, please, to get back to us.

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1 MR. KANE: I sure will.  
2 CHAIRMAN STEINBERG: Go back and look at your  
3 calendar and get back to us on that issue, because --  
4 It's not the end of the world, but the Committee here  
5 does go through some painstaking preparation, as does  
6 the full Senate, to engage in a very serious way people  
7 like yourself for confirmation to high positions. And  
8 when they leave immediately thereafter, you know, and  
9 then they're back for another job that essentially  
10 doubles their salary, it is of concern. And so I do  
11 want to know, sir, when you did take part in that --  
12 MR. KANE: Sure.  
13 CHAIRMAN STEINBERG: -- in that retirement  
14 seminar.  
15 MR. KANE: Can I add one thing, sir?  
16 CHAIRMAN STEINBERG: Of course.  
17 MR. KANE: That was not my goal, to retire and  
18 come back and be a commissioner. That wasn't the plan.  
19 That wasn't a conspiracy.  
20 CHAIRMAN STEINBERG: I'm not suggesting it was  
21 a conspiracy.  
22 MR. KANE: It just happened that way, sir.  
23 CHAIRMAN STEINBERG: So you were appointed  
24 when, July of '08?  
25 MR. KANE: Yes, sir.

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1 CHAIRMAN STEINBERG: And you retired in  
2 September of '07?  
3 MR. KANE: Yes, sir.  
4 CHAIRMAN STEINBERG: How did this particular  
5 appointment arise?  
6 MR. KANE: What happened, when I announced my  
7 retirement, I received a call from a person that worked  
8 at the board that said that they were having a class for  
9 hiring -- they were hiring and then having an academy  
10 for retired annuitant deputy commissioners.  
11 So I said I never worked with the board, I  
12 really didn't know anything about the board, and that  
13 would be fun to still be in touch with the department  
14 and be retired.  
15 So I put in my application for retired  
16 annuitant deputy commissioner. It was accepted. I went  
17 to a three-week academy, and that's what I was doing. I  
18 was going to county jails doing probable cause hearings,  
19 revocation hearings, and I was fortunate enough a few  
20 times to sit with commissioners and be a deputy  
21 commissioner for parole hearings, lifer suitability  
22 hearings. That's what I was doing. And I was enjoying  
23 it, and I was having a good time.  
24 And then I got a call and they said, you know,  
25 "We've been monitoring your work. You appear to be

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1 doing a good job. We'd like to know if you would like  
2 to be a commissioner." They had some vacancies. I felt  
3 it was an honor to be asked.  
4 I didn't ask -- The first question that came  
5 out of my mouth wasn't, "How much money do they make?"  
6 It was the fact that it was an honor to be asked. I  
7 knew there would be a perception after I was confirmed  
8 before, going back into the confirmation process as a  
9 commissioner, but I looked at it as destiny. It wasn't  
10 something I planned.  
11 CHAIRMAN STEINBERG: Okay.  
12 Your take on the discussion we had throughout  
13 the afternoon on the appropriate legal standard for  
14 determining whether someone is unsuitable for parole.  
15 How do you reconcile the word -- What is the word?  
16 MR. KANE: "Current risk," "unreasonable risk"?  
17 CHAIRMAN STEINBERG: "Unreasonable," sorry.  
18 -- the word "unreasonable" with the opinion of  
19 the California Supreme Court that talks about current --  
20 "current dangerousness"? How do you recognize those?  
21 MR. KANE: Like my fellow commissioner said,  
22 the State Supreme Court clarified -- Title 15 clarified  
23 the Penal Code and used the term "a current risk of  
24 dangerousness." And I believe that it's utilized, in  
25 effect: Thirty years from now -- 30 years ago, he was

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1 dangerous. He committed a heinous or cruel act. But  
2 what is his current risk of dangerousness today?  
3 CHAIRMAN STEINBERG: If he or she has a minor  
4 risk of dangerousness but still a risk of dangerousness,  
5 does that make him or her unsuitable for parole?  
6 MR. KANE: No. There's no cookie-cutter  
7 hearing. Every person has the potential to have some  
8 risk. You have to measure is the risk going to be going  
9 out and committing a murder again, going out and  
10 committing a rape again, going out and committing a  
11 kidnap for robbery, or for whatever. I mean, if the  
12 person goes out and gets a DUI, they're still a risk,  
13 but we're looking at the danger, the risk towards  
14 society, public safety as a whole.  
15 CHAIRMAN STEINBERG: I want to ask you about  
16 one particular case that came up in the research in  
17 which you denied parole to an inmate and cited as the  
18 reason, or at least one reason, that the furniture  
19 moving job he would have with his parents' company was  
20 not a vocation, because if the inmate became disabled,  
21 he could not rely on it.  
22 Can you just -- Every case is fact specific.  
23 I'm sure there are nuances, but that one kind of  
24 bothered us a little bit. A guy's got a job. We don't  
25 expect people to come out and take high-paying,

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1 professional jobs right out of prison, do we?  
2 MR. KANE: No. But I remember the case very  
3 well, sir, and because the father says that "I'm going  
4 to buy you a moving company" --  
5 CHAIRMAN STEINBERG: Oh, the father said --  
6 MR. KANE: He's going to buy him a moving  
7 company.  
8 CHAIRMAN STEINBERG: Ah.  
9 MR. KANE: The father could have said, "I'm  
10 going to buy him a chemistry set, and he's going to  
11 become a rocket scientist." I mean, the reality is what  
12 the father said. His father was going to buy him a  
13 moving company, is what he said at the hearing. There  
14 is no vocation for moving furniture. That's what was  
15 said, sir.  
16 CHAIRMAN STEINBERG: Okay. All right. Well,  
17 we'll relook at that one.  
18 Other questions? Members?  
19 Okay. Let's hear from the witnesses in  
20 support, please.  
21 Welcome.  
22 MR. NUNEZ: Thank you. Good afternoon,  
23 Senators. Thank you for having me here today, for  
24 letting me speak. My name is John --  
25 CHAIRMAN STEINBERG: You're always welcome to

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1 speak. You're a member of the public.  
2 MR. NUNEZ: Thank you. That's true. If I  
3 could just have two hours of your time, please.  
4 CHAIRMAN STEINBERG: All right. You have until  
5 6:05, not a minute longer.  
6 MR. NUNEZ: My name is John Nunez. I'm a  
7 retired captain from San Quentin State Prison Death Row  
8 and chief of security. I took 3 percent at 50 also, but  
9 I didn't go back to work. I went ahead and I decided to  
10 get into teaching, so now I teach at the police academy  
11 at Napa part-time, and the rest of my time I spend in  
12 the Caribbean.  
13 I've known Tony Kane approximately 20 years,  
14 sergeant, officer, and he was one of the most fair and  
15 honest people within my department. I can say I can  
16 trust him. He's somebody I can trust within the  
17 department.  
18 I have sat on hundreds of committees with  
19 Mr. Kane, and one of the things about Mr. Kane, he is a  
20 programmer, such as myself, and I spent a lot of time  
21 working with Mr. Kane developing programs, programs like  
22 getting in Alcoholics Anonymous at the institution,  
23 pre-release programs, Toastmasters to allow the inmates  
24 to learn how to speak when they get up in front of the  
25 board. So he's a very fair man, and he wants to see

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1 people get out, and he wants to help people to make sure  
2 that they get that before they get outside.  
3 He does have some very difficult decisions in  
4 this business on if they are ready to get out and if  
5 it's going to be safe for the public.  
6 So anyway, I just wanted to say I am in support  
7 of Mr. Kane, and I think he'll do a fine job, and  
8 they're going to have a very difficult job in what they  
9 have to do.  
10 Thank you very much for your time.  
11 CHAIRMAN STEINBERG: Thank you very much.  
12 Other witnesses in support.  
13 Are you coming up? Kind of in between.  
14 MS. HOFFMANN: It's kind of a point of  
15 clarification.  
16 CHAIRMAN STEINBERG: Witnesses in between.  
17 MS. HOFFMANN: Hi. My name is Johanna  
18 Hoffmann, and I have kind of a point of clarification.  
19 I'm not sure, obviously, which hearing you were  
20 just speaking about with the moving company, but I did  
21 have a hearing with Mr. Kane as the presiding  
22 commissioner with a similar fact pattern. So I don't  
23 want to say for sure that there weren't, maybe, two  
24 hearings that occurred with this same situation, but my  
25 recollection of that particular client was that his

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1 family started a moving company shortly after he went to  
2 prison, because it was something --  
3 He and his father worked for separate moving  
4 companies before my client went to prison. When he went  
5 into prison, the father started his own moving business  
6 so that when my client got out, he would be able to join  
7 the family and work in that business. So it wasn't an  
8 offer to purchase a moving business in the future. It  
9 was business, a family business, that had been started  
10 years before.

11 CHAIRMAN STEINBERG: Do you remember it that  
12 way, sir?

13 MR. KANE: That wasn't her case. I remember  
14 exactly the case that it was. It was a case where a  
15 husband and wife starved their five-year-old son over a  
16 period of two years, and the young man died at  
17 30 pounds. She was not the attorney for that case.

18 CHAIRMAN STEINBERG: So we're talking about  
19 different --

20 MS. HOFFMANN: Can we say -- Is there a reason  
21 why we wouldn't say the name? Brian Daniels.

22 CHAIRMAN STEINBERG: Don't say the name.

23 MS. HOFFMANN: They're public records. There  
24 are transcripts, right?

25 MR. KANE: Well, if you were the attorney, then  
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1 Committee. My name is Thomas Master. I'm an attorney  
2 with Uncommon Law in Oakland, California. Our firm  
3 represents lifers in their individual capacities at  
4 parole hearings and habeas corpus petitions. We are  
5 also co-counsel on the Henry Rutherford case, which is a  
6 class action on behalf of all lifers that relates to the  
7 timeliness of the parole consideration hearings. As  
8 my -- In my capacity as an attorney, I've reviewed  
9 hundreds, if not thousands, of lifer cases.

10 I want to preface my comments regarding  
11 Commissioner Kane about some of the responses that  
12 Mr. Kane and the other commissioners had regarding  
13 Henry Lawrence and the standard of review. That case  
14 involved what was the evidence that the board was  
15 relying on to demonstrate that a prisoner was an  
16 unreasonable risk of safety.

17 I find their responses somewhat shocking and  
18 disappointing. That case related to: Was it simply the  
19 standard of review if the board, in their decision,  
20 cited a piece of evidence in the record that related to  
21 one of the unsuitability factors, or was the issue  
22 whether or not the evidence that the board cited, did it  
23 demonstrate current dangerousness. It never altered the  
24 standard that the board's regulations set forth that in  
25 order to deny parole, the board must find that the

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1 I apologize.

2 CHAIRMAN STEINBERG: Say the case.

3 MS. HOFFMANN: Brian Daniels.

4 CHAIRMAN STEINBERG: Is it the same case?

5 MR. KANE: It could be. It could be, yeah, and  
6 she could have been the attorney for the case.

7 MS. HOFFMANN: The crime that was described was  
8 the same.

9 CHAIRMAN STEINBERG: It's the same crime.

10 The question is just factually. You're saying  
11 the father had bought the furniture company while the  
12 inmate was in prison and that the job was waiting for  
13 the inmate.

14 You remember, Mr. Kane, that there was an offer  
15 to buy a moving company.

16 MR. KANE: And I didn't see any proof that the  
17 father had a moving company purchased. The way I  
18 remember it is that the father was going to purchase the  
19 moving company and give it to his son.

20 CHAIRMAN STEINBERG: Okay. We're not going to  
21 reconcile it at this moment.

22 MS. HOFFMANN: Thank you.

23 CHAIRMAN STEINBERG: Okay. Thank you.

24 Any other witnesses? Come on up.

25 MR. MASTER: Good afternoon, Senators,  
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1 prisoner is unreasonable risk to public safety.

2 The courts of this state have consistently held  
3 that the statutes require the board to grant parole, and  
4 the Supreme Court reiterated in *Lawrence* that parole is  
5 to be the rule, not the exception.

6 CHAIRMAN STEINBERG: Okay. I think what I  
7 would like -- I appreciate it.

8 Again, what we're doing, obviously, in the  
9 three -- for the three nominees here is we're going to  
10 put the matters over so we can clarify this issue, and I  
11 would ask you if you would to work with our staff,  
12 because we want to hear your interpretation and point of  
13 view, and of course we'll work with the board counsel  
14 and with the administration as well to see if we can get  
15 on the same page as to what this means. Okay?

16 MR. MASTERS: Okay.

17 CHAIRMAN STEINBERG: If you can go through the  
18 rest briefly, I would appreciate it.

19 MR. MASTERS: Yes. Quickly.

20 My point being is that this board does not  
21 follow the statutes that the legislative body has set  
22 forth regarding parole and release on parole as set up  
23 by the legislature and as further affirmed by the courts  
24 of this state.

25 I oppose Commissioner Kane based on a personal  
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1 experience I had at a hearing in which he denied my  
2 client parole based on his exercising his right as set  
3 forth in Penal Code Section 5011 and the board's  
4 Regulation 2236. My client had a right to not discuss  
5 the offense. Commissioner Kane denied him parole, and  
6 when I questioned him during the decision phase, he  
7 stated -- I asked him pointblank, "If my client admitted  
8 that he kicked the person, would that change the  
9 situation?"  
10 And he said, "Yes."  
11 That is a violation.  
12 CHAIRMAN STEINBERG: Are you up in the Court of  
13 Appeal?  
14 MR. MASTERS: Yes. We have this case pending.  
15 CHAIRMAN STEINBERG: Okay. I was wondering.  
16 MR. MASTERS: Yes.  
17 CHAIRMAN STEINBERG: Okay.  
18 MR. MASTERS: And so I find that the board in  
19 general does not follow the statutory mandate. But I'm  
20 here today specifically because I had a personal  
21 experience with this commissioner that he denied my  
22 client parole based on his unlawful interpretation of  
23 the Penal Code.  
24 CHAIRMAN STEINBERG: Mr. Kane, is it important  
25 for the inmate to discuss the underlying crime in your

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1 consideration?  
2 MR. KANE: No, sir. And it's protected by  
3 Title 15, that he does not have to.  
4 I would like to add that I have had over 442  
5 hearings in eight months, and I've only sat in front of  
6 this gentleman one time. So if he wants to base my  
7 whole career on one hearing, that's his right.  
8 But I would like to add that I don't recall  
9 saying it. I do know that I don't sit alone in making  
10 the decision, that a deputy commissioner sits next to me  
11 and makes the decision also.  
12 CHAIRMAN STEINBERG: Right.  
13 MR. KANE: And we both made the decision that  
14 the inmate was not suitable for parole.  
15 CHAIRMAN STEINBERG: Okay. We're not going to  
16 debate the particular case. If you want to let staff  
17 know the case, and if you have a transcript cite, we  
18 will look into it.  
19 MR. MASTERS: Thank you.  
20 CHAIRMAN STEINBERG: Thank you.  
21 Other witnesses in opposition. Do we have one  
22 or two? Come on up. We're going to move here.  
23 MR. MILLER: Donald Miller, your Honor.  
24 Regarding Commissioner Kane, I reviewed about 25  
25 transcripts of his hearings. The reasons for denial

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1 are highly irrational. There is no regulation that  
2 requires a prospective parolee to have a job secured in  
3 advance. The regulations only require that the inmate  
4 has marketable skills. So to deny parole because  
5 there's not a job secured is totally against the rules.  
6 It's irrational.  
7 Finally, in three cases I reviewed Commissioner  
8 Kane sat in judgment of his wards at San Quentin when he  
9 was warden. He had direct conflicts with two of those  
10 inmates, and he did not even bother to recuse himself  
11 from the panel, so that those inmates had to stipulate  
12 they were unsuitable in order to get a continuance so  
13 they could get another hearing in three years before  
14 another commissioner. I feel that that's very  
15 unethical, your Honor. Thank you.  
16 CHAIRMAN STEINBERG: Any --  
17 MR. KANE: Can I respond?  
18 CHAIRMAN STEINBERG: Of course you may respond.  
19 MR. KANE: Every hearing that I have, I advise  
20 the inmates, and it's in the transcripts, that they have  
21 a right to a hearing panel that they agree with, that  
22 has no prejudice against them.  
23 If the inmate states that he has an issue with  
24 me, which has only happened one time out of 442 hearings  
25 that I've had, I excuse myself. I've also excused

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1 myself in two other hearings, not because I feel I  
2 couldn't be impartial as the fact that the inmate  
3 personally worked for me when I was a sergeant and a  
4 lieutenant, and I also wrote a letter of reference for  
5 him for the board. So I excused myself from that  
6 hearing panel. If Mr. Miller can quote what cases, I'll  
7 be glad to respond to them.  
8 CHAIRMAN STEINBERG: We will ask Mr. Miller to  
9 do that and, of course, give you a full opportunity to  
10 respond. Okay.  
11 MR. KANE: Thank you.  
12 CHAIRMAN STEINBERG: Thank you.  
13 MS. THOMPSON: Hi. My name is Pamela Thompson.  
14 I'm sorry. I'm very nervous, so I'll try not to talk  
15 too fast.  
16 CHAIRMAN STEINBERG: Just take your time.  
17 MS. THOMPSON: Okay. My husband is a lifer.  
18 He's been in prison since he was 17, almost 31 years.  
19 Shortly after he turned 18, he was transferred to  
20 San Quentin where Mr. Kane was a new CO.  
21 There was an altercation that my husband was  
22 the instigator in that Mr. Kane was also involved in, so  
23 there was some bad history there. So he, you know, has  
24 a very good record for almost 20 years, my husband, and  
25 at his last board hearing, which was the end of 2008,

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1 Mr. Kane was the commissioner on the board.  
2 Now, we have a private attorney, and I don't  
3 recall it being offered for, you know, him to recuse  
4 himself if it was thought there was some prejudice. I  
5 feel that he should have recused himself because of the  
6 prior history, that my husband would not get a fair  
7 hearing. And so he was forced to stipulate for three  
8 years so that he could have a fair hearing in the  
9 future. And three years might not sound like a lot to  
10 you, but we have a 19-year-old daughter who's been  
11 waiting for her dad to come home. She's now a sophomore  
12 in college. He's missed every major event in her life,  
13 and three years to us is a very long time.

14 You know, it's also at great expense that we go  
15 through all of these legal things. Like you had  
16 mentioned asking the previous attorney if his client had  
17 filed an appeal. Well, we've gone all the way through  
18 the state courts now with a writ from the previous board  
19 hearing, and I'm \$19,000 into this. So not only does it  
20 cost the taxpayers thousands and thousands of dollars  
21 for each one of these appeals, but it costs us  
22 personally thousands and thousands of dollars.

23 CHAIRMAN STEINBERG: The piece that I'm  
24 concerned about is, did Mr. Kane --

25 You're saying that your husband was involved in  
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1 MS. THOMPSON: In the prison.  
2 CHAIRMAN STEINBERG: Do you remember this guy?  
3 MR. KANE: Yes, sir. I did.  
4 CHAIRMAN STEINBERG: Did you offer to recuse  
5 yourself?

6 MR. KANE: Yes, sir, I did. His attorney,  
7 because he had a high psychological evaluation,  
8 requested a stipulation for three years. His attorney  
9 requested. And when Mr. Thompson came in the room, the  
10 first thing I said to him was, "Hi, Frank. How you  
11 doing? You're getting kind of gray."

12 And he said to me, "So are you, Mr. Kane." I  
13 remember explicitly.

14 What she failed to say also is that I was the  
15 chief deputy warden and had plenty of pleasurable  
16 experiences with her husband in talking to him on the  
17 yard and having everyday conversation. She's correct.

18 CHAIRMAN STEINBERG: Okay. Again, we can look  
19 at the transcript, but if you're -- the only concern I  
20 would have -- we're not here to relitigate every case --  
21 is whether or not the hearing officer went ahead without  
22 acknowledging knowing the person, and he says that's not  
23 the case.

24 MR. KANE: No, sir.

25 CHAIRMAN STEINBERG: You're not saying that's  
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1 an altercation at San Quentin --  
2 MS. THOMPSON: Yes.  
3 CHAIRMAN STEINBERG: -- where Mr. Kane worked.  
4 MS. THOMPSON: Yes.  
5 CHAIRMAN STEINBERG: And did your attorney in  
6 the hearing with Mr. Kane as the hearing officer seek to  
7 recuse him from hearing the case?  
8 MS. THOMPSON: No, he did not. He suggested  
9 that my husband stipulate for the three-year denial,  
10 which -- I mean, in retrospect, he probably should have,  
11 you know, stated that Mr. Kane should have recused  
12 himself. But I also feel it would have been ethical for  
13 Mr. Kane to offer that initially when -- you know, when  
14 he saw somebody that he had really negative history  
15 with. Granted, it was 30 years ago.

16 CHAIRMAN STEINBERG: The altercation was  
17 30 years ago?

18 MS. THOMPSON: Thirty years ago, but still --

19 CHAIRMAN STEINBERG: I thought you said the  
20 altercation was -- there was 20 years between --

21 MS. THOMPSON: The altercation was -- I mean,  
22 he was 18 years old. He had just gotten to  
23 San Quentin.

24 CHAIRMAN STEINBERG: Oh, the altercation in the  
25 prison.  
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1 the case.  
2 MS. THOMPSON: No. I'm saying that -- That  
3 brings me to my last point, and that is that with the  
4 board being comprised of law enforcement and peace  
5 officer membership, it's going to be hard to always have  
6 an impartial hearing where there's no history. And if a  
7 judge knows the defendant, they're going to recuse  
8 themselves.

9 So it gets down to really the main point. We  
10 need a cross-section of society on the parole board.

11 CHAIRMAN STEINBERG: Very good. Thank you.  
12 Thank you very much for coming to Sacramento to testify.  
13 We have one more. Please.

14 MS. KLINGE: I was waiting till the end.

15 Jill Klinge with the Alameda County District  
16 Attorney's Office. I'm just going to make a couple  
17 brief points based on what I've heard today.

18 First of all, with the question as to the  
19 standard that's currently being applied, if you put four  
20 lawyers in a room to discuss *Lawrence*, *Shaputis*, and  
21 Title 15, you're going to get different answers from all  
22 of us based on our interpretations, and I think you know  
23 that.

24 CHAIRMAN STEINBERG: No. But that may be true,  
25 but I think the public and certainly the Senate has the  
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1 right to know what standard the board itself --  
2 MS. KLINGE: I'm not disagreeing with that, but  
3 what I'm saying is it depends on where you're getting  
4 your information. So when you were talking about  
5 providing an appellate lawyer to come in, we've got  
6 inmate attorneys who are very highly educated, district  
7 attorneys, you're going to get different information.  
8 We're asking people who are not judges to be trained on  
9 legal complexities that lawyers -- like I've been one  
10 for 22 years -- sometimes struggle with.  
11 CHAIRMAN STEINBERG: I understand.  
12 MS. KLINGE: So it's going to be an interesting  
13 issue. But, obviously, if you're looking for a  
14 resolution of that --  
15 CHAIRMAN STEINBERG: I'm looking for board  
16 policy based upon the regulations and the applicable  
17 court precedence.  
18 MS. KLINGE: What I've got to say -- I think  
19 since *Lawrence* has passed, the board has struggled with  
20 it, but they've really tried hard to train on it. The  
21 commissioners are trying hard to do it, as are all the  
22 parties in the cases.  
23 CHAIRMAN STEINBERG: And we don't know what it  
24 is. That's what we want to hear.  
25 MS. KLINGE: I'll also point out since

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1 December 2008 until current, grants have increased  
2 53 percent. So if you're on the inmate's attorney's  
3 side, or whatever side you're on, that's the way it is.  
4 So it's not that this panel is suddenly doing something  
5 completely different.  
6 CHAIRMAN STEINBERG: We're not on anybody's  
7 side here.  
8 MS. KLINGE: No, I'm not saying that. I'm just  
9 pointing out the statistics.  
10 CHAIRMAN STEINBERG: Okay. Fair enough.  
11 MS. KLINGE: The -- I've worked with all four  
12 commissioners that were before the panel today. I can  
13 just say a couple brief comments. Commissioner Chrones,  
14 one of the first commissioners that I've ever seen read  
15 the transcripts, all the transcripts of past hearings.  
16 They don't have a lot of time to do that, tab them and  
17 look deeply into the cases. I think she needs to be  
18 commended for that. That's really going beyond what  
19 they used to do. I've been doing this for over three  
20 and a half years. It's something I wish they could all  
21 do. I know there are time constraints, and I hope that  
22 they all start to do it. But I can say I have  
23 specifically seen her do that. I know others have done  
24 it in specific instances. I'm not faulting others. I'm  
25 just going to point out a few highlights.

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1 Commissioner Kane, I have worked with him a  
2 lot. He does sit at San Quentin a lot, from what I've  
3 seen on my caseload. And you do have a script, and they  
4 read from the script, ask each and every inmate, "Do you  
5 have a problem with this panel? Do you have an  
6 objection to this panel?" And most of the inmates that  
7 have come before Mr. Kane know him. And none of them,  
8 in my hearings, have ever had a problem. In fact, some  
9 of them have been happy to see him as their  
10 commissioner, which shows me he must have interacted in  
11 that institution in a helpful manner to them.  
12 CHAIRMAN STEINBERG: Right, but my only advice  
13 is that I do think it's important that the commissioners  
14 themselves put any relationship they might have with the  
15 inmate on the record themselves. It shouldn't be  
16 incumbent upon --  
17 MS. KLINGE: No. I've seen them do it. But  
18 sometimes if you've worked there long enough, you don't  
19 recognize that individual, and they might recognize you.  
20 Lastly, just briefly, we have in the past  
21 and -- we have asked the senators, and I know everyone  
22 is extremely busy, to watch a hearing, because it is  
23 extremely helpful when you see it in action. Seeing it  
24 on paper is not the same. I know the staffers routinely  
25 come to the hearings. We even have video equipment if

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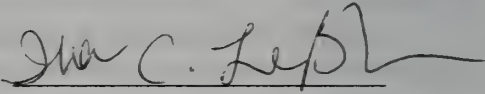
1 you don't want to go to the prison if you don't have the  
2 time, because I know how busy you are. But we've all  
3 invited everyone. And it's so hard, I know, for you  
4 guys to know the ins and outs of every position you have  
5 to confirm someone for.  
6 CHAIRMAN STEINBERG: It's a very important  
7 offer, and we do need to take advantage of it. I mean,  
8 you know, maybe during the fall. Maybe after the budget  
9 is signed.  
10 MS. KLINGE: I'm available for anyone to come  
11 with me any time they like. Thank you.  
12 CHAIRMAN STEINBERG: Thank you very much. We  
13 appreciate it.  
14 All right. Once again, Mr. Kane, just as with  
15 the other people, we're going to put this over to seek  
16 some clarity on this issue of the legal standard, but I  
17 also want to look into some of the factual issues on a  
18 couple of the cases that we've talked about and ask you  
19 if you can just get back to what's on -- you know, your  
20 best recollection from your calendar as to when you  
21 attended the PERS retirement meeting. We would  
22 appreciate that. And we will reset. We are fully  
23 cognizant of the statutory deadlines here, and we'll  
24 reset your nomination in a timely way. Okay.  
25 MR. KANE: Thank you.

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1 CHAIRMAN STEINBERG: Thank you very much, sir.  
2 Appreciate it.  
3 MR. KANE: Thank you everyone.  
4 CHAIRMAN STEINBERG: All right. We need  
5 Senator Cedillo and Senator Dutton here to finish off  
6 the calendar, so why don't we take a second and wait for  
7 them to come.  
8 (Recess taken.)  
9 CHAIRMAN STEINBERG: All right, Members. Let  
10 us take up -- First of all, Mr. Drummond is on call.  
11 1B, the vote stands at one yes and two nos.  
12 So please call the absent members on  
13 Mr. Drummond.  
14 MS. BROWN: Senator Cedillo.  
15 SENATOR CEDILLO: Before -- I just want it  
16 known that I'm going to cast a vote based on the ongoing  
17 policy this week that we have downstairs, the  
18 administration, on who's the appropriate nominee, what  
19 kind of background he should have. I'm going to cast a  
20 no vote.  
21 MS. BROWN: Cedillo, no.  
22 Dutton.  
23 SENATOR DUTTON: Aye.  
24 MS. BROWN: Dutton, aye.  
25 CHAIRMAN STEINBERG: The nomination fails two  
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1 to three.  
2 All right. File item two. Any -- Can we take  
3 these all as a package, 2E through J. Moved by Senator  
4 Dutton.  
5 Please call the roll.  
6 MS. BROWN: Senator Cedillo.  
7 SENATOR CEDILLO: Cedillo, aye.  
8 MS. BROWN: Cedillo aye.  
9 Dutton.  
10 SENATOR DUTTON: Aye.  
11 MS. BROWN: Dutton aye.  
12 Oropeza.  
13 SENATOR OROPEZA: Aye.  
14 MS. BROWN: Oropeza aye.  
15 Aanestad.  
16 SENATOR AANESTAD: Aye.  
17 MS. BROWN: Aanestad aye.  
18 Steinberg.  
19 CHAIRMAN STEINBERG: Aye.  
20 MS. BROWN: Steinberg aye.  
21 (Thereupon, the Senate Rules Committee hearing  
22 adjourned at 4:36 p.m.)  
23  
24 --o0o--  
25  
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1 --o0o--  
2 I, INA C. LeBLANC, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify  
4 that I am a disinterested person herein; that the  
5 foregoing transcript of the Senate Rules Committee  
6 hearing was reported verbatim in shorthand by me,  
7 INA C. LeBLANC, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.  
10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in  
12 any way interested in the outcome of said hearing.  
13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 1st day of June, 2009.  
15  
16   
17  
18 INA C. LeBLANC  
19 CSR No. 6713  
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1 APPENDIX  
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Senate Confirmation  
Lea Ann Chrones, Commissioner  
Board of Parole Hearings  
Responses to Senate Rules Committee Questions  
May 8, 2009

**Statement of Goals**

*BPH decides whether to parole life-term inmates and has responsibility for parole revocation decisions. Members hold hearings at prisons throughout the state and have responsibility for determining whether life-term inmates are fit for release.*

**1. *What are your goals and objectives as a commissioner of BPH? Why are you suited for this job? How will you measure your success?***

As a Commissioner, my goals and objectives focus on public safety. While public safety is paramount, my objective in each hearing is to afford due process to the inmate and the victims and to be well prepared in advance of each hearing. It is my responsibility to discern whether the inmate was provided all hearing rights in preparation for his/her hearing. During the hearing, it is my responsibility that all parties have a fair opportunity to represent their interests, consider all the evidence presented and apply the laws and regulations appropriately in determining suitability.

I am well suited for this position after a career coming up through the ranks in the California Department of Corrections and Rehabilitation (CDCR). The experience gained from the past 28 years includes an understanding of inmates sentenced to life in prison, their day to day living conditions, their daily challenges and rehabilitation opportunities. This experience combined with a strong personal and professional sense of justice and fairness for all individuals prepares me well for the work of a Commissioner. In this position, the measure of success is a job well done, due process rights preserved, timely and effective hearings and advance preparation for each hearing.

**2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to your conclusions and what measures you use to assist with your analysis. How do you factor in the need for public safety in evaluating an inmate's suitability for release?***

As a result of working for CDCR for over half my life, I have had the opportunity to see a number of inmates who were incarcerated for a life term, then earn a grant of parole, and become successful law-abiding members of their communities. A number of these inmates were originally sentenced to either death or life without the possibility of parole. Their sentences were commuted either as a result of a change in state law or on appeal, resulting in an indeterminate sentence with the possibility of parole.

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appointments



I describe these specific circumstances because it demonstrates the ability of some inmates to successfully rehabilitate and return to our communities.

Opportunities are available for all life inmates to participate in educational and vocational training as well as self-help courses to assist them in preparing to re-enter society. I firmly believe that any inmate, who *truly* wants to succeed, will succeed. Many inmates immediately understand what they have done, the impact of the life crime on the victims, families and society. They enter prison and immediately start down a path towards rehabilitation and re-entry into a free society. Other inmates may not have this understanding and for them the path of rehabilitation may take a much longer time to follow and complete. Both types of inmates will have the same initial opportunities to succeed - whether they take that opportunity will be up to them.

Public safety is part of every decision regarding suitability – whether it is a denial or a grant recommendation. In each decision, I must consider the factors of suitability as set out in Title 15 §2402 and determine whether the inmate poses a current risk of dangerousness if released.

**3. *Please explain how your professional background as a warden and senior corrections administrator assists your decision making on the board.***

In my previous responses, I touched on how my prior work experiences generally assist me in my work as a Commissioner. My experience comes into play in each and every hearing I preside over. I began my work as a Commissioner with a high level of understanding of the inmate's central file – how it is organized; the confidential section and how to use that material; and finding relevant material quickly. Maybe the most valuable skill I have gained through my experience is the ability to effectively communicate with the inmates that appear before me. Although this may sound strange to some, I am very comfortable talking to inmates. I understand where they have been in their incarceration, physically and emotionally. In a sense, we speak the same language. All Commissioners get a sense of that in time. I have received positive feedback from inmates and legal counsel regarding my ability to speak frankly, respectfully, and honestly with life inmates.

I have also had the opportunity to sit on classification committees and disciplinary committees where evidence is presented and decisions made in applying the institutional regulations. Often times I had to consider the information from different sources, supporting documentation and make challenging decisions that would impact not only the inmate but the institutional security. The life suitability hearings are complex and there are more parties present but similar decision making skills still apply.

### **Training**

*The 2005 law that created the BPH requires that within 60 days of appointment, and annually thereafter, commissioners and deputy commissioners undergo a minimum of 40 hours of training.*

- 4. *Now that you have chaired hearings for some months, how do you evaluate the quality of your training? Do you have recommendations for improvement?***

I received training as a retired annuitant Deputy Commissioner with the Board of Parole Hearings (BPH) in the areas of probable cause hearings and revocation hearings for determinate inmates pending parole violations. The training provided was very comprehensive and encompassed all aspects of the revocation process and also reviewed the role of the Deputy Commissioner in the life suitability hearings.

The training I received when I became a Commissioner was some of the best hands-on training that I have ever received. There were less than ten of us in the training, so we each were given the individual attention needed. The staff that provided the training were subject matter experts who were Deputy Commissioners who had sat on life panels, and also had experience in defense of life inmates or prosecuting life inmates. The training was very well planned and provided me with materials that would later assist me in conducting hearings. There was lecture, small group interaction and role playing through realistic scenarios. ANY doubts I had or concerns about comprehension were addressed until I felt comfortable with the information and how to use it. After the classroom training was completed, the new Commissioners were assigned to hearings with several seasoned Commissioners to observe and then preside over hearings while being mentored through the hearing process. I don't have any suggestions for improvement at this time.

- 5. *In the training, what factors are you told are most important in weighing whether an inmate should be paroled?***

No specific factor of suitability as set out in Title 15 §2402 was given more importance than another. We spent many hours reviewing and learning about all the factors of suitability and how they applied to a determination of suitability in a hearing. The emphasis in training was to consider all the information, apply all the factors and then make a decision regarding suitability.

- 6. *When a procedural question arises during a hearing you are chairing at an institution, who is available to assist you to answer the question? During previous BPH confirmation hearings, board members have raised concerns about the lack of support available to them by phone from***



***Sacramento. Do you believe you get the help you need in a timely way so that hearings are not needlessly delayed?***

Each Commissioner was issued a Blackberry with full e-mail connectivity. As part of our training, we were given instruction on how to use them effectively in obtaining the support we would need while in the field. We were provided contact numbers to reach our legal team both during and after business hours. I have never had to wait for more than 20 minutes to get a responsive answer to any question I have had. The BPH legal staff, lifer program staff and support staff at headquarters have been extraordinarily responsive.

***7. The hearings you chair can sometimes involve complex legal or procedural issues. Does anyone continue to monitor your performance as a "lifer" panelist, either in person or through a review of transcripts, so that you may continue to improve your performance? Please be specific.***

BPH has several staff members that monitor hearings, specifically the data entry and transcripts. If staff has a question or concern, I am contacted immediately and respectfully for the information. Initially, as a new Commissioner, I would receive a call about once a week from staff who wanted to see how I felt about the hearings I was conducting; ask if I needed any assistance; and offer suggestions as needed. If the program subject matter experts saw a procedural concern in the transcripts, they would contact me to discuss the concern and provide feedback. In my opinion, this contact only helped to improve my performance. During my first several months, I would receive positive comments and constructive criticism.

***8. What should the Legislature expect from commissioners regarding consistency in lifer hearings? Should all of the commissioners and deputy commissioners weigh the various factors in a consistent manner?***

I strive to conduct the life hearings I preside over in a consistent manner to assure that all procedural requirements are met. Consideration of the suitability factors found in Title 15 is individualized as to each inmate, his or her life crime and path of rehabilitation and self development. There is no checklist approach to weighing and evaluating the information in relation to the suitability factors received at each hearing. Where one inmate has excelled in vocations, he or she may have fallen short in development of insight into the causes and conditions of his or her criminal conduct. Each hearing and each inmate are different. The Commissioners and Deputy Commissioners receive training in the application of the suitability factors and combine that training with our objectivity and discretion to ensure a fair and impartial hearing.

***9. How long should an inmate be "disciplinary free" before you consider granting a release date, assuming all other pertinent issues indicate***

***he/she is ready to be released? Is there a policy? What guideline do you use?***

There is no guideline or policy regarding a period of disciplinary free time before an inmate is considered for parole. Each instance of misconduct is unique and should be weighed individually taking into consideration the seriousness of the conduct, presence or absence of violence, inmate's explanation and acceptance of responsibility for misconduct, similarity to criminal conduct before incarceration, or a similarity in trends of misconduct while incarcerated. I read all the documentation for the rules violation to get an accurate assessment and to ask relevant questions of the inmate at the hearing. Each case is evaluated individually as each inmate brings to the hearing a different criminal history, disciplinary history, participation in violent acts and level of acceptance and responsibility for their choices and conduct. Can the inmate conform to the rules and regulations while incarcerated? As stated previously, public safety is a primary concern when making a suitability decision – if the inmate cannot follow the rules while in custody, the question then becomes what indication is there he/she can follow the rules and laws of a free society?

### **Proposition 9**

*An inmate with an indeterminate life sentence is required to receive an initial hearing one year prior to the inmate's minimum eligible parole date. Until now, subsequent hearings have occurred between one and five years apart for murder convictions. With the passage of Proposition 9 in November, these intervals dramatically changed. Under the new law, one year denials are no longer an option. Commissioners must first consider a 15-year denial. Commissioners also must use a "clear and convincing evidence" standard in determining the appropriate denial length, down to a three-year denial—now the minimum time allowed between hearings. However inmates are able to periodically request that the board advance the hearing date.*

*Proposition 9 also removed the limit on the number of family members who can attend and testify at the hearing, and allows victim representatives to attend and testify without regard to whether the victim's family is present.*

#### **10. Have you seen changes as a result of the passage of Proposition 9, and have they impacted your workload?**

I have not seen dramatic changes in my hearing workload in the field. The number of victims and victim's next of kin has not increased at hearings although their statements may be a little longer as Proposition 9 expanded the areas on which they can comment.



- 11. Commissioners were provided additional training to deal with changes brought on by Proposition 9. Please explain how you were told to determine what "clear and convincing evidence" is. How do commissioners know whether to deny parole, for example, for 15 years or 3 years? Please be specific.**

The training we were provided in December 2008 regarding Proposition 9, or Marsy's Law, included determining denial lengths and using the clear and convincing standard of review to determine whether a 15 year or 10 year denial was necessary, or should the panel consider a lesser period of denial. If the determination is that the inmate is unsuitable for parole, the denial length starts at 15 years and only if there is clear and convincing evidence that the inmate will not need 15 years to become suitable, then reduce the denial period to 10 years. The same process applies to reduce the denial length to less than 10 years.

The clear and convincing evidence the panel considers in determining whether the denial length should be 15 or 10 years or less, is found in the inmate's positive behavior, accomplishments and contributions to his/her own rehabilitation. If the inmate has been given the opportunity to participate in beneficial programming and then takes advantage of those opportunities; and does not participate in documented negative behavior; has gained insight into their criminal behavior; and has availed himself or herself of available self-help programming, then the clear and convincing evidence standard may have been met. Each inmate and each hearing presents a different picture to the panel as to specifically what evidence will be considered. There must be "no substantial doubt" that the inmate has presented evidence of good behavior and programming in order to reduce the denial time from 15 to 10, and then from 10 to 7, 5 or 3 years. The more the inmate has positively accomplished, the less additional time he or she will need to become suitable and be considered as such by the panel.

- 12. Do you believe victims received adequate notification of hearings?**

Victims and victim's next of kin receive 90 day advance notice of hearings under the new requirements of Proposition 9. In addition, Proposition 9 also requires the Board provide notice 14 days prior to the hearing confirming the date, time and place of the hearing. In my experience at hearings with victims and victim's next of kin present, there have been no complaints or concerns about the notices they receive.

### **Programs**

*Prisons have a wide variety of academic and vocational programs as well as self-help offerings, such as Alcoholics Anonymous. Commissioners may recommend that an inmate enroll in a particular program to better prepare himself or herself for life outside of prison.*

- 13. *Some board members have stated they now get lists of programs at each prison. Are you receiving such lists? How are they provided? How often are they updated?***

I was provided a list of available programs and self help groups for each institution at our December 2008 training. This information was organized to meet our needs, making it more user friendly for Commissioners. We were advised that the lists would be updated semi-annually and provided at our semi-annual training. Additionally, I request program availability information from the institution where I am conducting hearings. Although I am familiar with some institutional programs, availability can change without notice. Maintaining contact with the individual institutions is the best way to stay current on available programming for inmates.

- 14. *Which programs have you observed since your appointment to this position and where? How do you know if a particular program is effective? If you recommend participation in a specific program for an inmate, are you certain it is available to the inmate?***

In conducting hearings at the California Men's Colony (CMC) at San Luis Obispo, I was made aware of a job assignment referred to as the "Gold Coats." This assignment is a highly sought-after position by the inmates. I toured several areas at the prison, speaking to many of the inmate workers. The individual responsibilities vary, but generally consist of care-giving to the more severely affected inmates within the Mental Health Program (EOP level of care); the Developmentally Disabled Program (at the DD3 level of care) and in the Hospice-Extended Care Program. The lifer population is preferred by the prison due to their longevity. The lifers that I spoke to want to work as Gold Coats because it allows them to "pay back" for the crimes they committed. I was impressed by the level of attention they must give to other inmates regardless of race, condition and at times, personal risk. While at CMC, and with their permission, I also sat in on a discussion in an Anger Management Group. I found the shared discussion enlightening. The men were open even though I was there. I could tell they were learning good communication skills and tolerance of others.

I am very familiar with self-help programs, educational and vocational programs as a result of my previous experience as well. Although I have not toured extensively as a Commissioner, I did in the last two years of my CDCR career. My interest then was similar to what it is now: how do the programs affect the inmate for future reintegration into society? Are they realistic? If job training is involved, is it something that will provide viable work skills for years to come? I feel very privileged to have had the opportunity to tour many of the available programs at institutions around the state.

- 15. *As the department moves to focus academic and vocational programs on inmates being paroled in the coming three years, how will life-term***



***inmates get the wide variety of programming commissioners recommend for them to qualify for release? Do you as a BPH member participate in these policy decisions?***

The Board has not had an opportunity to weigh in on these decisions since my appointment in July 2008. I look forward to that opportunity in the future.

***16. Based on your experience, do vocational programs, as offered, prepare inmates to be part of the state's work force?***

Many of the vocational programs offered to inmates prepare them for reintegration into our communities. Examples of some of the available vocational training are electronic technology, radiology technician, computer repair, and janitorial and landscaping. There are some vocations that may not prepare inmates for successful integration such as small appliance repair, upholstery and dry cleaning. Continued focus on development of vocations that meet the needs of society as well as the development of a marketable skill for the inmate is imperative. In these very difficult budget times it is difficult for CDCR to keep pace with technology, which permits some of the less effective vocational opportunities to remain in existence. It is important to note that the Prison Industry Authority does offer growth in work positions that create marketable skills for inmates, from welder to plumber, to electrician to optician.

***17. The lifer panel has, by tradition, expected lifers to provide specific parole plans at the time of the lifers' hearings. In an economy where unemployment is climbing and finding a job has become increasingly difficult, even for those with good job skills, has your expectation about the specificity of a lifer's parole plans changed? Do you require a lifer to have secured a job on the outside at an unspecified future date should he or she be found suitable for parole? Are you aware of any assistance provided to lifers who are expected to present you with parole plans?***

There is no requirement that an inmate have a job offer to become suitable for parole. Title 15 § 2404 (d) (8) "Understanding and Plans for Future" provides that an inmate make realistic plans for release or have developed marketable skills that can be put to use upon release. What constitutes realistic parole plans without a marketable skill is the challenge for an inmate. A grant of parole with no plan for residency, employment, community/family support, or a substance abuse relapse prevention plan if applicable, is a plan to fail. A recommendation for a grant of parole means the inmate is no longer a current risk of dangerousness to the community. If the inmate stole, robbed or sold drugs in the period around his/her life crime and they have no plan for how they will support themselves when released, there is a probability the inmate will fall into their previous criminal behavior to support themselves.

There are lifer groups and some volunteer organizations at some of the institutions that work with life inmates to develop transition plans and community support to help them upon release.

### **Psychological Evaluations**

*The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The historic lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee. The absence of a "current" psychological evaluation is often the reason for a hearing postponement, though under current policy it is supposed to be done every three years.*

*Starting January 1, 2009, BPH introduced a new strategy as part of its effort to reduce the backlog of lifer hearings. A new psychological evaluation, called a Comprehensive Risk Assessment (CRA), has been implemented and will be valid for five years. A secondary report, known as a Subsequent Risk Assessment, will be conducted as an update for hearings held prior to the five-year expiration of the CRA. Reports completed prior to January 1, 2009, will remain valid for three years from their completion date or until used in a hearing resulting in a decision.*

- 18. How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? If a clinician describes an inmate as a moderate risk for violence, does that disqualify him or her from parole in your view?**

The Forensic Assessment Division of the BPH provided training as both a new Commissioner and again in our December training with the change in psychological report guidelines. The training consisted of an overview of the process they use to evaluate inmates and complete the reports, risk assessments administered, changes made to the report format, and explanation of terminology.

The psychological report is one tool that assists us in reaching an informed decision regarding an inmate's suitability for parole. The individual risk assessments by the clinicians are again, only part of what I review and evaluate in the hearing. A finding of "moderate" risk for violence does not specifically disqualify an inmate from a finding of suitability, as the assessment may be based on static factors that may preclude a lower rating. The psychological report should be used along with other information in relation to the suitability factors to assess an inmate's readiness and suitability.



**19. *Do you believe the risk assessment information contained in the psychological evaluation is useful to you in making a decision? How will the new assessment be more effective?***

As previously stated, the risk assessment information is useful when balanced with all other information available. In recent hearings, the Comprehensive Risk Assessment (CRA) has been available and is more detailed in nature and in some cases, contains more narrative within the assessments. This can be valuable for the panel as many times the inmate shares important information regarding insight into the life crime, prior criminality, substance abuse or gang involvement. This provides me a starting point for questioning in the areas of insight, development of remorse, and determination of the inmate's current mental state and attitude towards the life crime. All available information is helpful to the panel in determining the inmate's suitability.

**Hearings**

*BPH members conduct their hearings in close quarters, inside state prisons in two-person panels. Some hearing documents are forwarded to them just prior to the hearings.*

**20. *Your working conditions can be difficult and your hearings can be long. Do you have any suggestions for how the process could be improved?***

Currently, my typical work week has an average of sixteen hearings scheduled. After eight months in the field conducting hearings, I estimate it takes an average of three hours to complete an entire hearing from start to data entry. With four scheduled hearings – Tuesday through Thursday – my average work day is twelve hours or more if all four cases proceed to hearing. This does not include case preparation time, transportation to and from home or hotel, or breaks for lunch or dinner.

Although the days are very long, I understood the working conditions prior to accepting my appointment. I will not take short cuts or spend less time on a hearing in order to leave earlier, regardless of the circumstances. One suggestion I would make would be when operationally possible, schedule three hearings per day. This would permit adequate time for transportation, review of central file and prior transcripts at the prison, before each hearing. Operationally I know that this suggestion is not currently possible. But as the BPH hearing caseload decreases and scheduling can meet demand or the number of Commissioners is increased, this should be a priority consideration to improve working conditions.

**21. *When do you prepare for hearings? When is the board packet made available to you? Do you believe the current system allows you time to completely review the file and to be fully prepared?***

Usually, I receive the board packets at my home a minimum of ten days prior to the scheduled hearing week. Many times, I receive them two to three weeks prior to the week of scheduled hearings. If the work days are not too long, I try to prepare for the following week's hearings at night. If the days prove to be too long, then I dedicate Saturday or Sunday to prepare and review documents for each of the scheduled hearings. The current practice of scheduling 16 hearings a week does not allow sufficient time within a 40-hour work week to appropriately prepare each case. I opine that Commissioners should not have to surrender a weekend day virtually every weekend to complete case preparation.

**22. *Please evaluate the en banc hearing process. When the full board is asked to decide a case because of a split decision between the BPH member and deputy commissioner on the two person lifer panel, or when the Governor asks the board to look at information he believes was overlooked initially, do you believe you have the information you need to reach a fair decision?***

In most cases, the information that we receive is sufficient to render an informed decision. BPH staff prepares all the relevant documentation for us to consider and mails us either hard copy documents or a CD with the information on it. This information is reviewed by each Commissioner prior to the public session at the monthly Board meeting. If the Commissioners determine they need more information to make a decision, then the request is made, generally of the investigative staff and the matter will be considered at a later time.





Senate Confirmation  
Douglas S. Drummond, Commissioner  
Board of Parole Hearings  
Responses to Senate Rules Committee Questions  
May 8, 2009

**Statement of Goals**

*BPH decides whether to parole life-term inmates and has responsibility for parole revocation decisions. Members hold hearings at prisons throughout the state and have responsibility for determining whether life-term inmates are fit for release.*

1. ***What are your goals and objectives as a commissioner of BPH? What do you hope to accomplish during your tenure? How will you measure your success?***

My goal is to provide a fair hearing to all parties present while considering public safety. It is important that I continue to improve in developing questions to get to the relevant and important information to determine the inmate's suitability. Making sure due process rights are afforded the inmate before the hearing and both the inmate and the victims and victim's next of kin during the hearing are paramount in providing the fairest hearing possible.

As I continue to sit on life panels, I also consider what proactive measures could be taken in my community to prevent certain types of crimes. My current focus is on gang intervention. In speaking with inmates, I hear what brought them to the gang and try to determine what intervening factor or circumstance could have brought about a different outcome.

2. ***Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to your conclusions and what measures you use to assist with your analysis.***

Yes, many offenders with indeterminate life sentences can be rehabilitated and safely returned to society. I have had the experience of inmates appearing before me that have taken advantage of a wide array of self-help programming as well as educational and vocational instruction. These inmates, as time has passed, improved their disciplinary record and developed emotional maturity, become reliable and display a sense of self esteem.

The Title 15 and the Penal Code, as well as case law, give each life panel the direction of what factors to consider in determining whether an inmate is suitable for release and not a current risk of dangerousness. Each hearing is considered individually – each inmate brings to the table the work they have accomplished towards rehabilitation as well as the negative factors that weigh against suitability. My responsibility is to work

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Appointments



with the Deputy Commissioner to develop the best information to weigh and balance all the factors of suitability and make a determination as to whether the inmate is suitable for a recommendation of parole.

**3. *How do you balance the need for public safety against the fact that human behavior can never be 100% predictable in evaluating an inmate's suitability for release?***

I agree that human behavior can never be 100 percent predictable. That said, there are good indicators of future behavior that include the inmate's historical information, current participation in the rehabilitative process while incarcerated, development of a good transition plan for release and increased insight into the causative factors of the inmate's criminal conduct. Public safety remains a priority in determining whether an inmate is suitable.

Each of the indicators/factors listed above are complex with many layers of information. For example, there is the inmate who attends self-help programming, but does not internalize any of the information and has not made any fundamental changes in his or her thinking or beliefs. This is only determined through searching questions at the hearing and discerning the inmate's credibility and sincerity. Then there is the inmate who has obtained several vocations and has marketable skills and has participated in some self-help programming during incarceration. Only upon further questioning by the panel is the information developed that the inmate still believes he or she acted in self defense although he or she stabbed the victim over 15 times. This inmate may still remain a current risk of dangerousness if released until he or she comes to terms with his or her conduct during the life crime, understands it and develops new responses to situations. These examples only serve to illustrate that each case is decided individually – there is no cookie cutter approach to such an important and complex decision.

**4. *Of the 12 appointed commissioners, 11 have been employed in law enforcement or corrections. Explain how your professional background as a former police officer might impact your decision making on the board.***

My work as a police officer and rising up through the ranks to Jail Commander have provided me with experiences and skills in evaluating people and what they have to say in stressful situations. My exposure to violent crimes allows me to see past the commitment offense to the person sitting across from me at a hearing. The commitment offense will always be considered and will never change – the only element that changes over time is the inmate.

My work/life history has been diverse and has given me a broad spectrum of experiences in interacting with people, institutions and cultures. I have lived in rural communities and in urban housing projects. I have served in the military and worked in

a factory. I attended college while working full time. I advanced my education and have taught at the university level. I entered the local political scene and served as a city council member and also have served on charitable boards. These broad varied experiences give me the skills to evaluate people, in this case, inmates. In each position I have held, I have had to make fast decisions, deliberative decisions and life changing decisions. In each decision, I used and considered the information available to reach the best and most fair decision I could make at the time. This is what I do now, along with the Deputy Commissioner, in each lifer hearing.

### **Training**

*The 2005 law that created the BPH requires that within 60 days of appointment, and annually thereafter, commissioners and deputy commissioners undergo a minimum of 40 hours of training.*

- 5. Now that you have chaired hearings for some months, how do you evaluate the quality of your training? Can inmates read the legal documents used in the hearing? Do you have recommendations for improvement?**

The quality of the training I have received has been excellent. The new commissioner training was high intensity and compacted into three weeks followed by two weeks of working with a veteran commissioner in the field. Since I was new to the Department of Corrections and Rehabilitation, there was a new language to learn. If the new commissioner training could have been extended for a week that would have been helpful as the learning curve was quite steep. The semi-annual training received in December 2008 was equally good and relevant to the work we do in the field. Always suggesting areas of improvement and legal updates in law and practice.

Regarding whether inmates can read the legal documents used in hearings, it is important to note that each inmate is appointed an attorney for the lifer hearing. That attorney meets with the inmate prior to the hearing to review and prepare to present information to the panel. If an inmate has a disability— physical, cognitive or language – this disability is identified by the institution at least four to six months prior to the hearing and accommodations are provided. Prior to the hearing, I review the Disability and Effective Communication Database to determine if there are any previously identified disabilities and whether accommodations have been provided. At the hearing, I review this information and ask the inmate questions regarding their ability and understanding to proceed to hearing and whether they need any additional accommodations. The inmate's attorney is also present to advocate for the inmate at these hearings and to assure all rights are provided.



**6. *In the training, what factors are you told are most important in weighing whether an inmate should be paroled?***

At the new commissioner training, we were provided with information regarding the Title 15 suitability factors found in §2402. There is no one factor that is more important than another. Some of the listed factors may not even apply to the individual inmate sitting before me. Over time I found that I focus on the more dynamic factors of suitability, the factors that can change over time. This focus is not to say I give those factors more weight, as all the suitability factors in Title 15 are to be considered with all the information and weighed by the same standard of objectivity.

**7. *Who, if anyone, has reviewed your transcripts or personally observed your performance in an effort to help you improve as a board member?***

My transcripts are reviewed regularly by the subject matter experts at the Board of Parole Hearings (BPH) headquarters who provided our commissioner training. I receive feedback regarding procedural processes, suggestions to improve questioning and development of decisions regarding suitability. My transcripts are also reviewed by BPH legal staff to determine compliance with Title 15 procedural requirements and feedback is offered if errors exist.

In addition to BPH monitoring and review, I seek and receive feedback from the District Attorney's representatives and the inmate's counsel that appear in my hearings. Their day to day observations are important to continuing development of my skills as a hearing officer. Not all feedback or suggestions are taken, but all are considered.

**8. *How long should an inmate be "disciplinary free" before you consider granting a release date, assuming all other pertinent issues indicate he/she is ready to be released? Is there a policy? What guideline do you use?***

There is no policy or guideline that directs how long an inmate should remain disciplinary free before they could become suitable for parole. Our training and my practice is to evaluate the rules violations and determine whether a nexus exists between the misconduct and past criminal behavior. Is the violation similar in nature the conduct of the inmate in the period of time leading up to the commitment offense? Has the inmate made positive behavioral changes since the misconduct occurred? Was the misconduct violent in nature? Does the inmate accept responsibility for his misconduct and does he understand what caused him to act in that way? It is after considering all this information and balancing the totality of the circumstances that a decision is made by the panel.

### **Proposition 9**

*An inmate with an indeterminate life sentence is required to receive an initial hearing one year prior to the inmate's minimum eligible parole date. Until now, subsequent hearings have occurred between one and five years apart for murder convictions. With the passage of Proposition 9 in November, these intervals dramatically changed. Under the new law, one year denials are no longer an option. Commissioners must first consider a 15-year denial. Commissioners also must use a "clear and convincing evidence" standard in determining the appropriate denial length, down to a three-year denial—now the minimum time allowed between hearings. However inmates are able to periodically request that the board advance the hearing date.*

*Proposition 9 also removed the limit on the number of family members who can attend and testify at the hearing, and allows victim representatives to attend and testify without regard to whether the victim's family is present.*

#### **9. How do you believe Proposition 9 has impacted the board's workload?**

Regarding the hearing workload in the field, I have experienced longer hearings as the number of victims and victim's next of kin has increased. Additionally, as the numbers of those attending a hearing has increased, Proposition 9 has expanded the scope of topics that they may address. Longer hearings make for longer hearing days. This can be challenging not only for the life panel, but for the institution staff and participants in the hearings.

#### **10. Commissioners were provided additional training to deal with changes brought by Proposition 9. Please explain how you were told to determine what "clear and convincing evidence" is. How do commissioners know whether to deny parole, for example, for 15 years or 3 years? Please be specific.**

BPH legal staff provided training regarding the standard of proof known as "clear and convincing evidence." The training used a compare and contrast method to come to understand the legal and practical meaning of this standard of proof. We were trained that preponderance was estimated to be a 51 percent probability and clear and convincing leaves no substantial doubt and beyond a reasonable doubt was the highest standard of review in our justice system.

The training regarding denial lengths as set out in Proposition 9 took place in December 2008 when the new law became effective. Our first decision remains the same – is the inmate suitable or unsuitable? Only after finding the inmate is unsuitable do we consider the denial lengths. Proposition 9 directs that the life panel first determine whether consideration of the public's and victim's safety requires a period of incarceration of 15 years. If the panel has no substantial doubt that the inmate does not



require 15 years of additional incarceration to possibly attain suitability, then the denial length to consider becomes 10 years. The same analysis applies for the denial length to decrease from 10 years to 7 years. Having made a determination that the inmate does not require incarceration beyond 7 years, then the analysis turns to the appropriate denial length of 7, 5 or 3 years.

The information that reduces the denial length from 15 years to 10 or 10 to consideration of 7 or less is the positive actions taken by the inmate while incarcerated. How has the inmate attempted to follow the path of rehabilitation? The inmate provides this information for these considerations with his/her actions, choices and behaviors. The more an inmate has developed insight into why the crimes happened, what he/she could do differently and understanding what their criminal conduct did to the victims, the victim's family, the community and their own family, the lower the denial length. This inmate is on the path to suitability and it may not take the 15 or 10 years to do the footwork, physically and emotionally to become suitable.

**11. *In your experience, has the board been able to comply with the new notification requirements for victims and family members?***

It is my understanding that since the certification of Proposition 9 – Marsy's Law, the 90-day notice to victims and victim's next of kin has been implemented. Full implementation was achieved in mid-March 2009, 90 days after the law became effective. My experience in talking with the victims and victim's next of kin at hearings is that they are receiving the necessary notice of the hearings.

**Programs**

*Prisons have a wide variety of academic and vocational programs as well as self-help offerings, such as Alcoholics Anonymous. CDC has struggled to ensure that programs are standardized for each prison. At the same time, commissioners may recommend that an inmate enroll in a particular program to better prepare himself or herself for life outside of prison.*

**12. *What should the Legislature expect from commissioners regarding a consistent format for life hearings? Should all of the commissioners and deputy commissioners weigh the various factors in a consistent manner? For example, what should be the appropriate emphasis on the facts of the inmate's original crime?***

During new commissioner training, I was provided a script format that was being used by each commissioner. This provides a consistent format for lifer hearings throughout the state. This consistent format assures that inmate's and victim's due process rights

are met, information and evidence is admitted correctly and a good record of information and fact is built leading to a determination of suitability.

The commitment offense will remain unchanged in each hearing. The circumstances of the commitment offense are considered as factors in determining suitability. Title 15 §2402 (c)(1) provides that certain circumstances of the commitment offense weigh against suitability. These circumstances are not weighed in a vacuum – they are considered in light of the inmate's understanding of his conduct, acceptance of responsibility, insight into the causative conditions of his criminal conduct and whether the circumstances of the crime create a continuing risk of dangerousness to society if the inmate is released.

Each factor of suitability is considered and each is weighed in conjunction with the other – no one factor receives more weight or consideration. Each life panel considers the same suitability factors with the information that pertains to the individual inmate seated before them and objectivity and discretion are used to arrive at a decision regarding suitability. The only single approach with one single result that applies in every case – is the individual assessment of each inmate with the facts presented in application to the Title 15 §2402 factors of suitability. Weighing information introduces the human factor and well educated and logical minds will often come to different or varied conclusions.

**13. *Some commissioners have stated they now get updated lists of programs at each prison. Are you receiving such lists, and how are they provided?***

We received a list of all available programming at each institution at the December 2008 training. The expectation is that we will receive semi-annual updates of this information. I also make inquiry at each institution via staff and the inmates as to what programming is currently available.

**14. *Which programs have you observed, and how do you know if a particular program is effective? If you recommend participation in a specific program for an inmate, are you certain it is available to the inmate? Have you observed basic literacy programs or any prison educational or vocational classes? Please be specific regarding where and when.***

I have visited programs at three different institutions: Calipatria State Prison in November 2008; California Institution for Women in December 2008; and California Substance Abuse Treatment Facility in February 2009. At each of these institutions, I observed the educational programs with focus on literacy, English and general education. I observed teaching and learning in both an individualized computer instruction environment and also with inmates tutoring inmates. The effectiveness of any program is more related to the willingness of the inmate's desire to learn and grow rather than the substance of the program.



When making recommendations to an inmate at the conclusion of a hearing, they are general recommendations towards an area of programming rather than specifics. Since the availability of programs varies from institution to institution, it is important to suggest alternatives to the inmate to succeed towards rehabilitation. Some inmates are limited in attendance to programming because of higher custody levels/classifications that they have acquired due to misconduct. These inmates must work at conforming to the rules of the institution to lower their security levels, resulting in more programs becoming available to them.

- 15. *As the department moves to focus academic and vocational programs on inmates being paroled in the coming three years, how will life-term inmates obtain the wide variety of programming commissioners recommend for them to qualify for release? Do BPH members participate in these policy decisions?***

Currently, BPH does not participate in the policy development or strategic planning regarding academic and vocation programs in the institutions. As a Commissioner, I continue to make suggestions and recommendations to inmates for needed areas of growth and improvement as they continue the path or start on the path of rehabilitation. When programming is not available, in whole or in part, I will recommend a course of self study, via correspondence courses or book reviews and reports of concepts learned. This information is well accepted in suitability hearings.

- 16. *The lifer panel has, by tradition, expected lifers to provide specific parole plans at the time of the lifers' hearings. In an economy where unemployment is climbing and finding a job has become increasingly difficult, even for those with good job skills, has your expectation about the specificity of a lifer's parole plans changed? Do you require a lifer to have secured a job on the outside at an unspecified future date should he or she be found suitable for parole? Are you aware of any assistance provided to lifers who are expected to present you with parole plans?***

Title 15 §2402 speaks to parole plans as a factor of suitability. The language of this regulation provides for realistic plans for release or a marketable skill that can be put to use upon release. There is no requirement that an inmate have a job offer in hand before becoming suitable for parole. The expectation regarding this suitability factor is that an inmate will provide the panel with a plan for successful transition into the free community if released on parole. These realistic plans should identify community/family support structure, substance abuse relapse prevention plan (if applicable), residence plans and a plan of financial support. To find an inmate suitable for parole and recommend a grant with no identifiable transition plan would only set that inmate up for failure in the community.

The available support to life inmates regarding development of parole plans varies by geography and institution. I have received information that there are some volunteer groups inside and outside of prison that work with life inmates as well as the network of life inmates themselves who work together to develop realistic parole plans.

### **Psychological Evaluations**

*The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The historic lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee. The absence of a "current" psychological evaluation is often the reason for a hearing postponement, though under current policy it is supposed to be done every three years.*

*Starting January 1, 2009, BPH introduced a new strategy as part of its effort to reduce the backlog of lifer hearings. A new psychological evaluation, called a Comprehensive Risk Assessment (CRA), has been implemented and will be valid for five years. A secondary report, known as a Subsequent Risk Assessment, will be conducted as an update for hearings held prior to the five-year expiration of the CRA. Reports completed prior to January 1, 2009, will remain valid for three years from their completion date or until used in a hearing resulting in a decision.*

**17. *How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? If a clinician describes an inmate as a moderate risk for violence, does that disqualify him or her from parole?***

In the July 2008 new commissioner training and December 2008 semi-annual training, the Forensic Assessment Division provided valuable information about the assessment process and the different assessment tools that are utilized. The BPH legal staff provided information regarding the use of the psychological report at hearings – it is an expert opinion and should be used as part of all information considered at a hearing. The report itself provides an abundance of information to the panel and often times offers new areas for questioning of the inmate to determine suitability.

A moderate risk of violence assessment does not by and of itself preclude a finding of suitability. The report generally includes all the information that supports such an assessment. If the information relied on to arrive at a moderate assessment is historical and unchanging, then it is incumbent upon the panel to take that into consideration when determining suitability.



**18. *Do you believe the risk assessment information contained in the psychological evaluation is useful to you in making a decision? How will the new assessment be more effective?***

In my opinion, the Comprehensive Risk Assessments are far superior in content and depth to the reports previously reviewed. They are consistent in format and content which helps the panel develop the necessary information to make a suitability decision. The risk assessments are based on historical data and the inmates conduct and behavior while incarcerated as well as their responses during the clinical interview. This information is often the foundation for questioning of the inmate by the panel regarding the inmate's insight into the causative factors of the life crime and development of behavior changes and remorse.

**Hearings**

*BPH members conduct their hearings in close quarters, inside state prisons in two-person panels. Some hearing documents are forwarded to them just prior to the hearings.*

**19. *Your working conditions can be difficult and your hearings can be long. Do you have any suggestions for how the process could be improved?***

It is challenging to conduct 16 hearings a week. There are times that hearings will go into the evening and this impacts not only the panel, but the institutional staff that must remain on duty at a late hour and the other people participating in the hearing. I would recommend a reduction of scheduled hearings to three hearings per day. This would permit additional review of the documents prior to each hearing and have rested and fresh panel members and participants in each hearing. I understand that operationally reduction to three hearings a day is not possible. Another alternative would be to add to the Commissioner numbers to allow more hearings to be scheduled and reduce the burden on the current twelve member Board.

**20. *When do you prepare for hearings? When is the board packet made available to you? Do you believe the current system allows you time to completely review the file and to be fully prepared?***

I will receive a box of board packets up to three weeks in advance of the scheduled hearing week. I either prepare for hearings on the weekend after I return home from a week of scheduled hearings or if there is time in the evening after a day of hearings. I don't believe the current process allows me to fully prepare during a 40-hour week, so I do so on my own time. Without exception, I am working part of the weekend and at night during the week to become and stay prepared for the hearings over which I preside.

- 21. *Please evaluate the en banc hearing process. When the full board is asked to decide a case because of a split decision between the BPH member and deputy commissioner on the two person lifer panel, or when the Governor asks the board to look at information he believes was overlooked initially, do you believe you have the information you need to reach a fair decision?***

We receive the information for the cases scheduled for En Banc review about 10 days prior to the board meeting. The information arrives in both print and compact disc. A Commissioner who did not participate in the hearing is assigned to review the materials and present the case in closed session. Public comment on the scheduled cases is received during the public session of our Board meeting. In most every instance, we have the necessary information to make a fair decision. Should additional information be needed, the Commissioners make the request and if necessary the matter is postponed to the next monthly Board meeting.





Senate Confirmation  
Hollis H. Gillingham, Commissioner  
Board of Parole Hearings  
Responses to Senate Rules Committee Questions  
May 11, 2009

Senate Rules Committee

MAY 12 2009

Appointments

**Statement of Goals**

1. ***What are your goals and objectives as a commissioner of BPH? Why are you suited for this job? How will you measure your success?***

My primary goal is to conduct a fair and thorough hearing with the safety of the public as my first concern. My primary objective is to complete each hearing in a timely manner, avoiding unnecessary postponements and continuances. In completing a timely hearing, I work with the deputy commissioner to avoid duplication of information or questioning where the facts are already established. Measurement of success in this position comes from feedback from the inmate's counsel, the district attorney's representative, deputy commissioners and Board of Parole Hearing (BPH) headquarters' staff that review transcripts.

2. ***Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to your conclusions and what measures you use to assist with your analysis. How do you balance the need for public safety against the fact that human behavior is never 100% predictable in evaluating an inmate's suitability for release?***

I believe inmates can be rehabilitated and can return to society and present no further problems to the community. Many crimes are situational and will not reoccur. Substance abuse treatment works with many individuals and as substance abuse is a major factor in many of the life crimes, the causative factor behind the criminal conduct is addressed with treatment. As inmates acquire self-esteem and marketable skills, as well as insight into why they became involved in antisocial behavior, they learn they can be of value and be productive members of society. I have observed inmates who are very proud of themselves and the abilities they have acquired while incarcerated. In one instance, I asked a female inmate if she was pleased with herself for obtaining an A.A. degree and learning nursing aid skills. She became tearful and stated she was very proud of herself and also very surprised at what she had been able to accomplish.

Public safety is the guiding principle behind each decision I make at a hearing. First and foremost is the need to protect the public from inmates who continue to be a current danger if released. When an inmate demonstrates that he or she has taken advantage of the programs offered and can articulate how it positively affected them, and has gained insight into the causes and conditions of their criminal conduct, they become less of a risk to society. No one can predict human behavior with 100 percent



certainty but using the best tools available and the best information possible, I make the best decision I possibly can. One that I believe in, and that is the most I can do.

- 3. *Of the 12 appointed commissioners, 11 have been employed in law enforcement or corrections. Explain how you believe your professional background impacts your decision making on the board.***

As a juvenile probation officer, I acted in a number of different capacities. I conducted citation hearings for juveniles, considering evidence and making decisions in juvenile supervision and juvenile diversion cases. One of my assignments was the supervision of dependent children of the court – children who were returned home or living with relatives under court supervision. I also investigated allegations of child abuse, neglect and molestation cases, much as Child Protective Services does currently. Although I was legally a peace officer, my primary responsibilities consisted of doing what was in the best interest of the child and enforcing the orders of the court. These duties and responsibilities provided me experience in asking questions behind the facts and listening to the answers to discern truthfulness and sincerity. Then, as now, I must consider the facts in front of me and apply the law, use my discretion and make reasoned decisions. I am comfortable in this role as these are skills I have developed and used over the past 30+ years.

### **Training**

*The 2005 law that created the BPH requires that within 60 days of appointment and annually thereafter commissioners and deputy commissioners undergo a minimum of 40 hours of training.*

- 4. *Now that you have chaired hearings for some months, how do you evaluate the quality of your training? Do you have recommendations for improvement?***

The training I received prior to becoming a Commissioner was comprehensive and intense. It covered all aspects of the hearing process and provided me with the information I needed to conduct hearings. I was provided extensive resource materials and still use them as a reference. I was fortunate to have been able to observe hearings for two weeks before the formal training started. This was invaluable, as the training really built on what I observed. I would recommend that every new commissioner have the opportunity to observe hearings prior to the training.

- 5. *When a procedural question arises during a hearing you are chairing at an institution, who is available to assist you to answer the question? During previous BPH confirmation hearings, board members have raised concerns about the lack of support available to them by phone from***

***Sacramento. Do you believe you get the help you need in a timely way so that hearings are not needlessly delayed?***

During my nine months as a Commissioner, I have never had a problem contacting staff at BPH headquarters if a question comes up during a hearing or during my preparation for a hearing. I have immediate access to the lawyers at BPH via Blackberry (e-mail or telephone) and to the subject matter experts who provided the training.

***6. The hearings you chair can sometimes involve complex legal or procedural issues. Does anyone continue to monitor your performance as a "lifer" panelist, either in person or through a review of transcripts, so that you may continue to improve your performance? Please be specific.***

The subject matter experts who conducted our training monitor/review my hearings. They provide suggestions and feedback regarding procedure, questioning and decision development. Additionally, legal staff reviews transcripts to determine whether Title 15 regulations have been met in the hearings. I have had the opportunity to do increased self review recently – a number of hearing decisions are being considered for modification as a result of a stipulation in the *Rutherford* case on hearings that fell within the new denial scheme of Proposition 9 – Marsy's Law. I have reviewed a number of transcripts of hearings I have conducted and received input from seasoned deputy commissioners regarding the content of my hearings and decisions. All feedback and suggestions to improve performance is welcome.

***7. What should the Legislature expect from commissioners regarding consistency in lifer hearings? Should all of the commissioners and deputy commissioners weigh the various factors in a consistent manner?***

Each inmate is viewed individually and therefore, each factor as it relates to that specific inmate carries its own weight. Factors of suitability as found in Title 15 need to be weighed in relation to the inmate sitting in front of me. As an example, "an escalating pattern of criminality" would be different for each inmate, looking at the crimes committed, when they were committed, the age of the inmate when committed and whether or not violence was involved. In my view, it is not possible to weigh the factors of suitability the same across the board – there is no "one size fits all." Where one inmate has programmed in self-help admirably and successfully but has no realistic parole plans and still blames the victim for the crime versus another inmate who has not completed much self-help programming but has earned a marketable skill and has a minimal institutional disciplinary history – the weighing of factors is different in each case. Each inmate deserves an individualized assessment of the suitability factors as they apply to the individual in front of me.



- 8. How long should an inmate be “disciplinary free” before you consider granting a release date, assuming all other pertinent issues indicate he/she is ready to be released? Is there a policy? What guideline do you use?**

There is no policy or guideline in place regarding disciplinary history as it relates to suitability. Title 15 §2402 provides that institutional behavior involving serious misconduct is a factor of unsuitability. If the inmate has a violent rules violation, the inmate needs to demonstrate to the panel he/she can control their behavior over a sustained period of time to be considered for a grant of parole. If the inmate has a substance abuse rule violation and drugs or alcohol were part of the commitment offense, the inmate needs to demonstrate that after attendance to substance abuse treatment groups he/she has internalized the tenets of treatments before being considered for release. Each commissioner has to evaluate the circumstances of the rules violation vis à vis the inmate's history, including the circumstances of the life crime. Each case must be assessed individually. I take into consideration the age of the violation, the circumstances of the violation, the inmate's explanation and/or acceptance of responsibility, and the inmate's criminal history, both in and out of prison. If an inmate cannot follow the rules in prison, his chances of being safely returned to the community are reduced. If the rules violation is an aberration in his behavior, it must be evaluated as such and weighed accordingly in conjunction with the other suitability factors found in §2402 of Title 15.

### **Proposition 9**

*An inmate with an indeterminate life sentence is required to receive an initial hearing one year prior to the inmate's minimum eligible parole date. Until now, subsequent hearings have occurred between one and five years apart for murder convictions. With the passage of Proposition 9 in November, these intervals dramatically changed. Under the new law, one year denials are no longer an option. Commissioners must first consider a 15-year denial. Commissioners also must use a “clear and convincing evidence” standard in determining the appropriate denial length, down to a three-year denial—now the minimum time allowed between hearings. However inmates are able to periodically request that the board advance the hearing date.*

*Proposition 9 also removed the limit on the number of family members who can attend and testify at the hearing, and allows victim representatives to attend and testify without regard to whether the victim's family is present.*

- 9. What changes in hearings have you seen as a result of the passage of Proposition 9, and how do you believe they impact the board's workload?**

***How are you kept abreast of legal actions that could impact implementation of Proposition 9?***

I have not experienced an increase in workload as a result of the implementation of Proposition 9 – Marsy’s Law. There has not been an appreciable increase in the number of victims and victim’s next of kin that attend the hearings I have conducted. When victims and victim’s next of kin do attend, they seem to be well prepared with written statements and make their points effectively.

We are kept abreast of legal actions regarding Proposition 9 – Marsy’s Law via legal updates at monthly Board meetings, via e-mail and if immediate notification is necessary, via telephone.

***10. Commissioners were provided additional training to deal with changes brought on by Proposition 9. Please explain how you were told to determine what “clear and convincing evidence” is. How do commissioners know whether to deny parole, for example, for 15 years or 3 years? Please be specific.***

At the December BPH Board meeting and training, BPH legal staff provided a session about standards of proof: preponderance; clear and convincing; and beyond a reasonable doubt. As the importance of the decision increases, generally the standard of proof increases. Clear and convincing evidence was described to commissioners as “having no substantial doubt.”

Using this standard of review in determining denial length, the life panel starts the evaluation and review at the 15-year denial length per the Penal Code. For example, if the inmate has a long history of gang membership and is a current gang member in prison, continues to commit crimes in prison, along with other factors of unsuitability, I would have no substantial doubt that he would need another 15 years to become suitable for parole. This inmate has a lot of work to do towards rehabilitation and suitability, specifically, detach from gang and debrief, become and remain disciplinary free, and participate in educational, vocational and self-help programming. He will need the 15 years to accomplish these goals.

In another case, if an inmate has remained free of disciplinary write-ups while incarcerated, and has been participating in self-help programming, but has a long history of criminal behavior, failures on probation before the life crime or a prior prison commitment, continues to receive minor disciplinary write-ups and has not developed realistic parole plans; I have no substantial doubt that this inmate could be come suitable for parole, if he does the work, in three, five or seven years.

The more positive work, conduct and rehabilitation an inmate has completed and the more development of insight into the causative factors of his criminal conduct so as not



to repeat them, the lower the denial length. Each case is evaluated individually using the factors of suitability found in Title 15 §2402.

**11. *Do you believe victims receive adequate notification of hearings?***

Yes, the victims and victim's next of kin are notified pursuant to Penal Code §3043, 90 days in advance of the hearing. It has been my experience that the District Attorney's Offices have been very active in working with the victims and victim's next of kin in preparing for these suitability hearings.

**Programs**

*Prisons have a wide variety of academic and vocational programs as well as self-help offerings, such as Alcoholics Anonymous. Commissioners may recommend an inmate enroll in a particular program to better prepare himself or herself for life outside of prison.*

**12. *How do you learn about educational, vocational, or self-help programs in state prisons? Which programs have you observed and when? How do you know if a particular program is effective? If you recommend participating in a particular program for an inmate, are you certain it is available to the inmate?***

In December 2008, commissioners were provided a list of all programs currently available at each institution. We anticipate either quarterly or semi-annual updates to this list. I have had the opportunity to observe several types of programs at the prisons where I conduct hearings. Upon arrival at institutions, some provide me an updated list of programming available. This has been very valuable in discussing programming with the inmates. The inmates also discuss the availability and effectiveness of the programs they attend. I can verify the non-availability with staff while I am working at the institution. The effectiveness of any program depends on the energy and willingness the inmate brings to that program. Some inmates are enthusiastic about specific programs and also describe programs that exist only to get the "chrono," the attendance slip.

I attended a Lifer Support Group at Central California Women's Facility in February 2009, as well as toured the facility. I also observed a substance abuse program staffed by outside volunteers and the Bridging program which involved tutoring new inmates in the reception center. Additionally, I toured the PIA Sewing area and observed inmates sewing uniforms, silk screening, and sewing flags. An inmate I had denied some months earlier approached me and was so proud of her accomplishments as a lead worker teaching inmates to sew and use the machinery. This inmate indicated

that any of the inmates she trained would be employable in a sewing factory upon release and able to support themselves.

In the Lifer Support Group I attended, I witnessed an intense role-play by an inmate who spoke of her remorse to the victim. She acted out various roles of people in her life from the perspective of a 16-year old and then her present age. It was a very emotional session not only for the inmate but for the other inmates attending, who then discussed what they felt, saw and understood about themselves.

At Mule Creek State Prison in March 2009, I attended a Gang Members Anonymous meeting which is modeled after the 12-steps of Alcoholics Anonymous. There were 23 inmates lead by an inmate who had been in the program for some years. The lead inmate described how he carried his gang and criminal thinking with him into prison for many years and how it set him back from growing. Only when he realized he was going to be a grandfather did he become willing to change not only his actions but his thinking. There were new members to this group and one decided to quit that day after he felt disrespected by another attendee who interrupted him. The leader spoke with him after the meeting and hopefully convinced him to come back. I spoke with another relatively young inmate after the meeting and he said he enjoyed the group. When asked what his plans were for parole, he indicated that he was serving three consecutive life terms and would never be released but found value in the group. He had been attending for several years and would continue in the future to help support changing his actions and thinking and working with others.

At Salinas Valley State Prison in April 2009, I attended Breaking Barriers, a group that was facilitated by an inmate. This program seeks to change the thinking of inmates and break down their old ways of seeing things and changing how they see the world around them. The founders of this program believe that by changing the inner attitude of their minds, the inmate can change the outer aspect of their lives – that change is possible. The program provides tools to develop cognitive thinking skills so change can take place. I observed all the inmates to be actively engaged and eager to participate in the discussion. I also observed a Narcotics Anonymous (NA) group that was concluding and an inmate that had received a denial earlier in the day wanted to speak to me. He was very positive and understood what he needed to do. He also indicated the NA group was very supportive of him and he would never stop attending.

Often times the inmates themselves are the most reliable sources of information about which programs are effective and which are not.

- 13. *As the department moves to focus academic and vocational programs on inmates being paroled in the coming three years, how will life-term***



***inmates get the wide variety of programming commissioners recommend for them to qualify for release? Do BPH members participate in these policy decisions?***

The Department of Corrections and Rehabilitation and the institutions are responsible for developing and providing programming for inmates. I frame my recommendations to the inmate based on what is available at that institution. The inmates know that to obtain the most effective and available programming they must work themselves out of high security prisons by remaining disciplinary-free and complying with the rules of the prison.

***14. Based on your experience, do vocational programs, as offered, prepare inmates to be part of the state's work force?***

Without question, yes. Prior to coming to prison, these inmates did not have vocational resources available, nor were they of the mindset to avail themselves of the opportunity if it existed. As I mentioned previously, the inmate who was a lead in the PIA sewing program had made herself very employable if released on parole. She is preparing to lead a completely different and independent life. Inmates regularly gain skills they did not think possible previously and have reached out for jobs in the community in their area of training.

One example that stands out in my mind is the inmate at Folsom who has become proficient in Braille translation through the prison program. This inmate, along with another inmate, translated an Organic Chemistry textbook for a UC Davis student. This particular inmate has at least five offers of employment to do contract work for institutions that aid the blind.

There are many programs that are available and they vary in content so that the inmates have choices based on their interests. If the vocational programs continue to grow and expand, more inmates can involve themselves and stir their interest, resulting in success in the community if released.

***15. The lifer panel has, by tradition, expected lifers to provide specific parole plans at the time of the lifers' hearings. In an economy where unemployment is climbing and finding a job has become increasingly difficult, even for those with good job skills, has your expectation about the specificity of a lifer's parole plans changed? Do you require a lifer to have secured a job on the outside at an unspecified future date should he or she be found suitable for parole? Are you aware of any assistance provided to lifers who are expected to present you with parole plans?***

Skilled workers will always be in demand in any economy. It is the unskilled inmates that will have problems finding employment. There will always be a demand for people

who know how to fix and repair things. This is especially true as the vocational training in high schools continues to decrease.

I do not require an inmate to have secured a job to become suitable for parole. The inmate needs to be prepared for employment and have realistic parole plans to become suitable for parole.

Regarding development of parole plans, I understand that there are some lifer groups which assist inmates in contacting outside resources to build a good transition plan to the free community if granted parole.

### **Psychological Evaluations**

*The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The historic lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee. The absence of a "current" psychological evaluation is often the reason for a hearing postponement, though under current policy it is supposed to be done every three years.*

*Recently, BPH introduced a new strategy as part of its effort to reduce the backlog of lifer hearings. A new psychological evaluation, called a Comprehensive Risk Assessment (CRA), has been implemented and will be valid for five years. A secondary report, known as a Subsequent Risk Assessment, will be conducted as an update for hearings held prior to the five-year expiration of the CRA. Reports completed prior to January 1, 2009, will remain valid for three years from their completion date or until used in a hearing resulting in a decision.*

#### **16. How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? How do you incorporate this tool?**

During my initial training in July 2008 and again in December 2008, I received training regarding the use of psychological reports in hearings. We received the information via lecture format and then in small group discussions. Although a psychological report is not required under the Penal Code or Title 15 regulations, it does provide some very relevant information regarding the inmate's past and present mental state and attitude toward the crime as well as noting any history of severe mental problems that relate to the commitment offense. This report also provides a risk assessment of recidivism and future violence based on historical information as well as relevant behaviors in prison and responses to questions from the evaluator.



I use the psychological report as a tool, a jumping off point for questions to the inmate regarding his perspective of his role in the life crime, his understanding of the causes and conditions of his conduct and the presence or absence of remorse. The questions tie in these concerns with the gains made in self-help programming and increased self-awareness.

**17. *Do you believe the risk assessment information contained in the psychological evaluation is useful to you in making a decision? How will the new assessment be more effective?***

I find the psychological reports and risk assessments very valuable. As previously mentioned, the reports help me develop relevant and individualized questions I want to ask the inmate and lead to a more focused discussion during the hearing. I am also of the opinion that the previous three years between psychological reports was too short of time to see appreciable change in an inmate. The new five year guidelines for the Comprehensive Risk Assessment gives the inmate more time to work on the issues they need to focus on, for example, if they need to gain more insight into the factors that caused their criminal conduct. This risk assessment is based on the information provided in the body of the report and is equally helpful to the panel determining suitability and to the inmate to develop a path of action towards suitability and rehabilitation.

**Hearings**

*BPH members conduct their hearings in close quarters, inside state prisons in two-person panels. Some hearing documents are forwarded to them just prior to the hearings.*

**18. *Your working conditions can be difficult and your hearings can be long. Do you have any suggestions for how the process could be improved?***

Some hearings take significantly longer than others – hearings with victims or victim's next of kin take longer and inmates who have worked closer to a finding of suitability take longer. Some inmate's attorneys and district attorney's representatives presentations are longer than others, resulting in longer hearings. The simple solution is to decrease the number of hearings per day from four to three, which I understand may occur in the future. Every party has the right to be heard and all their input is needed to arrive at a fair and reasoned decision.

- 19. *When do you prepare for hearings? When is the board packet made available to you? Do you believe the current system allows you time to completely review the file and to be fully prepared?***

I receive the board packets one and a half to two weeks before the scheduled hearing week – often the packets are received earlier. Any additional information is sent via overnight mail to my residence or e-mailed and then I print it. The current process works very well for me. There have been a couple of glitches that were easily rectified. I prepare my cases on the weekends and sometimes at night a week ahead of time. The night before a day of scheduled hearings, I review my notes and materials to be better prepared for the day.

- 20. *Please evaluate the en banc hearing process. When the full board is asked to decide a case because of a split decision between the BPH member and deputy commissioner on the two person lifer panel, or when the Governor asks the board to look at information he believes was overlooked initially, do you believe you have the information you need to reach a fair decision?***

At each monthly Board meeting we consider cases in the En Banc Hearing process. We receive public comment on individual cases. Prior to coming to the meeting, BPH headquarters staff prepares all the supporting material for each case and provides it to the commissioners either by compact disc or printed material. I have time to prepare and review the material prior to arriving at the Board meeting. I have the necessary information to make a reasoned decision and cast my vote.



*[The body of the page contains several paragraphs of text that are extremely faded and illegible. The text appears to be organized into sections, possibly separated by headings or subheadings, but the specific content cannot be discerned.]*

Senate Confirmation  
Anthony P. Kane, Commissioner  
Board of Parole Hearings  
Responses to Senate Rules Committee Questions  
May 11, 2009

**Senate Rules Committee**

MAY 12 2009

**Appointments**

**Statement of Goals**

*BPH decides whether to parole life-term inmates and has responsibility for parole revocation decisions. Members hold hearings at prisons throughout the state and have responsibility for determining whether life-term inmates are fit for release.*

**1. *What are your goals and objectives as a commissioner of BPH? How will you measure your success?***

My goals and objectives as a commissioner for the Board of Parole Hearings (BPH) is to conduct fair and impartial life suitability hearings. It is important to give all stakeholders at a hearing a voice, an opportunity to be heard. This includes the victims and victim's next of kin, deputy district attorney, inmate's counsel and the inmate. Additionally, it is my goal is to follow the procedures set out for hearings as found in Title 15 and the Penal Code.

My success is measured is different ways. As the victims and victim's next of kin have to relive the traumatic experience of the crime(s) committed against them at hearing, I try to maintain a respectful, sensitive and safe environment for them at the hearing. The feedback I receive from each of these individuals is important to me and helps me address concerns and issues in future hearings. I receive feedback on my hearing techniques and demeanor from the inmate's counsel and district attorney's representatives as well, either after the day of hearings or near the week's end. The positive comments are welcomed and the constructive comments are always considered, as there is always room for improvement. Not everyone leaves the room satisfied with the panel's decision, but generally everyone leaves the hearing room feeling heard and considered.

**2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you have come to your conclusions and what measures you use to assist with your analysis.***

Without question, there are inmates convicted of crimes resulting in life sentences that have successfully rehabilitated themselves and will be contributing members of our society. This path of rehabilitation can be challenging and longer for some inmates. One of the questions I ask myself is, "Has this inmate changed from who they were when they committed the life crime and have they become a better person?"



The measures of "have they become a better person" are how they have conducted themselves while incarcerated, what programs have they participated in, and how has their perception of who they were and who they are now changed. As a panel member, I consider the inmate's educational and vocational upgrades, self help programming addressing issues specific to them (i.e. substance abuse, anger issues, relationship issues, etc.), disciplinary actions or lack of them, and institutional work history. These considerations are weighed together with the circumstances of the commitment offense, and the inmate's social history and criminal history.

All these considerations are easy to identify, but the challenge in each hearing is to figure out if the inmate has identified the causes and conditions of his criminal conduct – why he/she did what they did? It is in the understanding of these conditions that true rehabilitation starts to take place. Has the remorse and the insight into their behavior expressed by the inmate gone from an understanding in their mind to an ability to change their responses to conflict and challenging situations? This is the challenge in each hearing, not only for the panel but for the inmate as well. A good day is when an inmate has developed the needed insight and created a successful transition for themselves into society and has become suitable to receive a grant recommendation.

**3. *How do you balance the need for public safety against the fact that human behavior is never 100% predictable in evaluating an inmate's suitability for release?***

The balance between the need for public safety and determination of an inmate's suitability is **the** question in each hearing. One hundred percent accuracy never exists in the evaluation of the human condition or behavior. Suitability hearings are not an exact science – it is human beings evaluating human beings. In each hearing, the panel is faced with an inmate that has committed murder(s) or other violent crimes, such as kidnapping for robbery/ransom/rape. As a panel member, I cannot only look at the successes of the inmate. Those successes must be weighed together with the criminal conduct that incarcerated the inmate for life. The public's safety has already been violated by the inmate at least once. Public safety is one of my highest priorities, as it has been throughout my 29 year career with the Department of Corrections and Rehabilitation (CDCR).

This balance between public safety and suitability is guided by the Title 15 regulations §2402, which sets out the suitability factors to be considered by the panel. The panel asks the tough questions. How the inmates respond and what they say are considered and weighed by both the deputy commissioner and myself. If in the end, the inmate does not pose current risk of dangerousness to the public or the victim, public safety has been considered.

- 4. *Of the 12 appointed commissioners, 11 have been employed in law enforcement or corrections. Explain how your professional background as a former deputy commissioner and warden might impact your decision making on the board.***

My career with the CDCR has proven to be an asset in my work as a Commissioner with the BPH. Starting as a correctional officer 29 years ago and rising through the ranks has provided me with opportunities to be in contact with inmates in many different capacities. Whether I was present during their daily activities of work, vocation or self-help to chairing committees regarding housing, classification or discipline, the common factor was always the interaction with the inmate. I learned to speak with them as people. I learned to listen to them and hear their perspective. I developed skills in evaluating their truthfulness and sincerity while observing their behavior in the institution. As a deputy commissioner, I learned additional skills in looking at evidence via testimony and documents and determining whether it was sufficient to return a parolee to custody or dismiss the charges.

When an inmate appears in front of a panel I am sitting on, I see the person - a person who committed a very violent crime, creating victims. Many times the crimes are heinous and overwhelming on their face. My exposure to these types of crimes over time allows me to consider the circumstances of the crime but also consider whether the inmate in front of me has changed, has rehabilitated themselves, so that they are no longer the same person who committed the violent crime. Some may call this a desensitizing to the circumstances of the life crime, but I see it as a learned ability to consider all factors in making a fair and unbiased decision.

### **Training**

*The 2005 law that created the BPH requires that within 60 days of appointment, and annually thereafter, commissioners and deputy commissioners undergo a minimum of 40 hours of training*

- 5. *Now that you have chaired hearings for some months, how do you evaluate the quality of your training? Do you have recommendations for improvement?***

I have said this before to whoever has asked, "the training I received prior to becoming a commissioner was fantastic". It was practical, relevant and very challenging. We were presented information from subject matter experts who used actual cases and documents that we would use in the field. We were provided every tool we would need from scripts, to decision making worksheets to necessary forms. We worked through problems in small groups, had lecture format and mock hearings. In addition to evaluation by the subject matter experts, we received peer feedback on our



performance in mock hearings. Especially helpful was the integration of the different backgrounds of those attending the training.

We have received semi-annual training with the necessary legal updates and procedural modifications and most importantly, refresher training on decision making and utilization of the Title 15 suitability factors. We also received weekly and monthly updates/reminders of previous training. All three types of training reinforced what had previously be provided and helped provide correction on any bad habits that I may have picked up doing 12-16 hearings every week.

As for recommendations for improvement, I would like to see the weekly update/reminders to continue. This provides me with real time correction and procedural reminders. In addition to the semi-annual training, I would suggest that several individual days of training be scheduled in conjunction with the monthly board meeting. This would be important to keep my skills fresh and avoid short cuts/bad habits/ruts. It also might be helpful to have a peer review of decisions. I could learn from other commissioners – how they handle certain situations, ask certain questions and deliver their decisions.

**6. *During your training, what factors are you told are the most important in weighing whether an inmate should be paroled?***

We received training that all Title 15 §2402 suitability factors are to be considered at each hearing. Prior to the hearing, no factor is more important than another in deciding whether the inmate should receive a grant recommendation or a denial. We received training that in making a decision regarding suitability, there may be factors that weigh more heavily than others due to the facts that come out at the hearing. The most important question that each panel has to answer in recommending a grant is whether the inmate is a current risk of dangerousness to society if released.

**7. *The hearings you chair can sometimes involve complex legal or procedural issues. Does anyone continue to monitor your performance as a "lifer" panelist, either in person or through a review of transcripts, so that you may continue to improve your performance? Please be specific.***

The subject matter experts who provided the initial training and semi-annual training provide comment after review of transcripts or the audio recording of my hearings. I have received suggestions for improvement in procedural matters, questioning and delivery of suitability decisions. I also receive training in 'real time' regarding data entry into the Lifer Scheduling and Tracking System so accurate information is provided for review.

A recent special project to address the cases that should receive the pre-Marsy's law denial scheme involved a review of cases where I had given a 15, 10, 7, 5 or 3 year

denial. After a miscellaneous decision was prepared to modify the denial length, I reviewed the transcript and the decision in that hearing. This opportunity for self appraisal was very beneficial. I was able to see where I need to "tighten up" my decisions and be clearer. Additionally, each month, the board reviews hearings that are referred by the Governor's office for En Banc review. This provides an opportunity for peer review of my hearings and decisions – where each commissioner reviews the relevant transcript and decision and a discussion takes place regarding the sufficiency of the facts collected at the hearing and the appropriateness of the decision made by the panel. I learn new approaches, question-asking skills, and how to prepare a decision from by colleagues. This has been very helpful.

**8. *How long should an inmate be "disciplinary free" before you consider granting a release date, assuming all other pertinent issues indicate he/she is ready to be released? Is there a policy? What guideline do you use?***

There is no policy or guideline regarding how long an inmate should be disciplinary free before a grant will be considered. Institutional adjustment, specifically serious misconduct while in prison, is a factor weighing against suitability per Title 15. I consider the type of misconduct the inmate participated in – was it late for work or possession of a weapon or some other action that would perpetuate violence in the institution. After considering the type of misconduct, I look at history of misconduct or lack of it; is this an anomaly; is the misconduct similar in nature to the criminal history of the inmate; and then weigh all the facts together to decide whether the misconduct weighs against suitability and does it out weigh the other factors supporting a grant. The inmate's ability to conform to the rules while incarcerated support the view that he/she can follow the rules and laws of a free society as well.

**Proposition 9**

*An inmate with an indeterminate life sentence is required to receive an initial hearing one year prior to the inmate's minimum eligible parole date. Until now, subsequent hearings have occurred between one and five years apart for murder convictions. With the passage of Proposition 9 in November, these intervals dramatically changed. Under the new law, one year denials are no longer an option. Commissioners must first consider a 15-year denial. Commissioners also must use a "clear and convincing evidence" standard in determining the appropriate denial length, down to a three-year denial—now the minimum time allowed between hearings. However inmates are able to periodically request that the board advance the hearing date.*

*Proposition 9 also removed the limit on the number of family members who can attend and testify at the hearing, and allows victim representatives to attend and testify without regard to whether the victim's family is present.*



**9. Do you believe Proposition 9 has impacted the board's workload? If so, how?**

Proposition 9 - Marsy's law has impacted workload and hearing length when victims and victim's next of kin participate in the hearing. Proposition 9 has expanded the number of victims, victim's next of kin and victim's representatives that may participate in the suitability hearing. In addition to the number of people attending, they also have expanded timeframes to express their views as the panel shall consider their entire and uninterrupted statements.

**10. Commissioners were provided additional training to deal with changes brought on by Proposition 9. At a recent hearing, you provided a very clear breakdown on your reasoning to give a 5-year denial rather than a 15- or 10-year denial. Please explain how you were told to determine what "clear and convincing evidence" is. How do commissioners know whether to deny parole, for example, for 15 years or 3 years?**

At our December 2008 semi-annual training we received training regarding the new denial scheme as set out in Proposition 9. Penal Code §3041.5 provides that the denial should be 15 years unless there is clear and convincing evidence that the inmate does not appear to need that length of time to become suitable for parole. The same analysis applies to the 10 year denial length. Clear and convincing means there is no substantial doubt that the inmate may become suitable in a lesser period of time. As a panel member, I consider the positives that the inmate has accomplished while incarcerated and evaluate if they are on the path of rehabilitation. If they are on the path and moving forward, I try to list those factors and then give a lesser denial length.

I consider the inmates performance while in custody, specifically, what has he/she done to enhance their ability to perform successfully in a free society. Do they have positive work evaluations; have they avoided misconduct while incarcerated; have they upgraded themselves either educationally or vocationally; and have they programmed in a manner that has helped the inmate develop insight in to their criminal behavior. If the inmate has only worked on one area and not another, then they will need more time to continue their path of rehabilitation and will receive a longer denial.

**11. Are inmates' requests for waivers being refused because they have failed to file for the postponement within 45 days of the hearing? Are you finding inmates and their attorneys generally are aware of waiver rules?**

Title 15 §2253 is very specific regarding waivers requested before hearing and at hearing. If the inmate requests a waiver at hearing, the regulation requires that good cause for the late request be present before it is granted. I have granted requests for waivers at hearing where the inmate recently received a disciplinary write up and was

working through the institution process to sort it out. I have denied a request for a waiver at hearing when the inmate wanted more time to develop his parole plans and obtain support letters. The inmate was aware of his scheduled hearing for more than four to six months and knew that he/she should have parole plans ready to go for the hearing. This particular reason was not good cause to grant the waiver at the hearing. If the inmate had made the request 45 or more days before the hearing it would have been granted at BPH headquarters.

It is my experience that the life inmates have an information network which is fast and accurate. I am aware that appropriate notices of the waiver process were placed in institutions where life inmates could review and read the material. Additionally, I reviewed the information that was provided to the state appointed and privately retained attorneys in October 2008. I was informed that attorney's representing life inmates were provided an informational presentation in northern and southern California that covered the waiver process as well as other topics. I do find that inmates and their attorneys are aware of the requirements of Title 15 §2253.

### **Programs**

*Prisons have a wide variety of academic and vocational programs as well as self-help offerings, such as Alcoholics Anonymous. CDC has struggled to ensure that programs are standardized for each prison. At the same time, commissioners may recommend that an inmate enroll in a particular program to better prepare himself or herself for life outside of prison.*

- 12. What should the Legislature expect from commissioners regarding a consistent format for life hearings? Should all of the commissioners and deputy commissioners weigh the various factors in a consistent manner? For example, what should be the appropriate emphasis on the facts of the inmate's original crime?**

The legislature should expect that life panels will conduct life suitability hearings in a consistent format. Each commissioner utilizes a script which provides the order of a hearing. The inmates' attorneys and district attorney's representatives have an expectation that the same format for a hearing will be used. Each panel considers the same factors of suitability as provided in Title 15 §2402 – what weight each factor receives is independently considered in each hearing. Each inmate is different. They each have a different path they have followed before being incarcerated and while incarcerated. There is no cookie cutter approach. As mentioned in my response to question 3, human behavior is never one hundred percent predictable. Each factor is considered and weighed with the focus on whether the inmate remains a current risk of dangerousness or not.



Title 15 §2402 provides the considerations when addressing the commitment offense, both in aggravation and mitigation. The panel looks at the specifics of the commitment offense, the behaviors leading up to the commitment offense and whether the inmate has developed remorse for the crime. One thing is for sure, the circumstances of the commitment offense will never change. What will or can change is the inmate's ability to go inside himself and figure out why it happened and how can he/she prevent such a thing from happening again.

- 13. *Some prison self-help programs are no longer available because of budget constraints. At a recent hearing held at Solano State Prison, you recommended that an inmate seek anger management programs. When you were asked whether you knew for certain what programs existed at the institution, you said you knew the class was available because you once worked there. (You were deputy warden there from 2003 to 2004). Although some commissioners have said they get updated lists of programs at an institution before hearings, you said you do not. What relevance would your knowledge of a program's existence in 2003-04 have to its availability in 2009 given the changes within CDCR?***

I do receive updates from BPH headquarters staff regarding available programming at the institutions. The last update was in December 2008. More importantly, I contact the Community Partnership Manager at each institution to learn what programs are currently available to life inmates, if necessary.

- 14. *Which programs have you observed and when? How do you gauge whether a specific program is effective?***

As a Chief Deputy Warden and Warden, I have observed and sat in on substance abuse programming, Prison Industry work areas, vocation classes and education classes. I last attended these activities in 2006. At the suggestion of BPH trainers, I have attended similar activities while a Commissioner to see if what I observe impacts my evaluation of inmates as a Commissioner in hearings. I took several tours at Central California Women's Facility and observed several programs: the Friends on the Outside, the SAP (Substance Abuse Program), and anger management class. I was able to interact with the inmates and ask them about their experiences in these programs. In one particular instance, I saw the phrase "low self esteem" on the board and asked three different inmates what that meant to them. They each gave me the technical "book" definition. I ask them again and asked them to give an answer based on their life experience and what was in their heart. The answers were very different. I think this was useful for me because I have learned to interact in a different way with inmates in how I listen and how I ask questions.

Every program has the potential to be effective. The real question is whether the inmate brings a willingness and openness to the program and gains self awareness or

better understanding of their behaviors before the commitment offense and now. This reminds me of the Buddhist phrase "When the student is ready the teacher appears". In the prison environment this phrase would sound like, when the inmate is ready, the program becomes effective. Through questioning the inmate and most importantly listening to the answers, we are able to figure out whether the program "effectively worked" on the inmate.

- 15. *The lifer panel has, by tradition, expected lifers to provide specific parole plans at the time of the lifers' hearings. In an economy where unemployment is climbing and finding a job has become increasingly difficult, even for those with good job skills, has your expectation about the specificity of a lifer's parole plans changed? Do you require a lifer to have secured a job on the outside at an unspecified future date should he or she be found suitable for parole? Are you aware of any assistance provided to lifers who are expected to present you with parole plans?***

Title 15 §2402(d)(8) is specific as to what the life panel should consider in relation to the inmate's parole plans. The panel considers whether the inmate's plans for transition into society are realistic or has the inmate developed marketable skills that can be put to use upon release. There is no requirement that an inmate have a job prior to being found suitable, but the plans do have to be realistic. Without a job, how will the inmate support themselves? The panel looks at family support, community support and transition plans that address substance abuse issues in addition to how the financial needs of the inmate will be addressed if released. To not have the necessary emotional and financial support in place would only place the released inmate on a path of failure.

### **Psychological Evaluations**

*The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The historic lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee. The absence of a "current" psychological evaluation is often the reason for a hearing postponement, though under current policy it is supposed to be done every three years.*

*Starting January 1, 2009, BPH introduced a new strategy as part of its effort to reduce the backlog of lifer hearings. A new psychological evaluation, called a Comprehensive Risk Assessment (CRA), has been implemented and will be valid for five years. A secondary report, known as a Subsequent Risk Assessment, will be conducted as an update for hearings held prior to the five-year expiration of the CRA. Reports completed prior to January 1, 2009, will remain valid for three years from their completion date or until used in a hearing resulting in a decision*



**16. What is your understanding of how recent or how old an inmate's psychological evaluation can be for it to be a relevant and useful tool in the lifer hearing process? How do you incorporate this tool?**

The representation of the guidelines stated above is the current practice. A new psychological report is completed every five years and if a hearing is scheduled before the five-year period has passed, a supplemental psychological report is completed prior to the hearing. I use the psychological report as a tool, a source of information that provides facts about the inmate's past and present mental state and attitude towards the crime, as well as, insight and remorse. This report provides an expert opinion as to the inmate's risk of future violence and recidivism. This information is considered by me when determining suitability. I also look for consistencies and inconsistencies in the statements made by the inmate to the Doctor and to the panel at the hearing.

**17. How have you been trained regarding the role a psychological evaluation should play in your decision making regarding parole suitability? If a clinician describes an inmate as a moderate risk for violence, does that disqualify him or her from parole?**

We have been trained to consider the psychological report as one of the many different pieces of information the panel considers in determining suitability. The psychological report is not required under Title 15, but it is a "value-added tool" in helping the panel assess the suitability of the inmate. As discussed in the previous response, the psychological report is a wealth of information to consider and to ask additional questions. The Doctor is another set of eyes on the inmate, evaluating their remorse, insight and future plans. As a panel member I take this information into consideration when making a decision.

A moderate risk of future violence or recidivism does not by itself make an inmate unsuitable. The reality is that for the inmate to have been assessed as a moderate risk there is specific information present to support the assessment. It is up to the panel (to me) to ask the questions about those specific facts and make an independent decision regarding the inmate's suitability.

**18. Please evaluate the en banc hearing process. When the full board is asked to decide a case because of a split decision between the BPH member and deputy commissioner on the two person lifer panel, or when the Governor asks the board to look at information he believes was overlooked initially, do you believe you have the information you need to reach a fair decision?**

The En Banc process involves four parts – the Governor's referral of a grant to the Board, the individual Commissioner's review of all the provided materials, the public

comment from friends and family and representatives of the state regarding the case and then deliberation. This process is thorough and effective. My experience with this process has been a positive one in that it has provided me with an opportunity to review my colleagues' hearing transcripts and decisions and learn from them. The discussions in closed session also give me new ideas and approaches for future hearings. I think En Banc is a good balance of fairness, although the Governor may refer it back for reconsideration, the Board makes an independent decision to affirm the grant or request additional review in a rescission hearing.



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May 18, 2009

Senate Rules Committee  
State Capitol  
Room 420  
Sacramento, California 95814-4900

Dear Senators,

Please find my responses to your questions regarding the confirmation hearing on my appointment as a member of the Horse Racing Board on May 27, 2009.

#### Goals

1. *Please provide a brief statement of your goals. What do you hope to accomplish in your term on the Horse Racing Board? How will you measure your success?*

My responsibility as a member of the horse racing board is to provide responsible oversight of the sport so that it can grow and continue to attract the public as one of the most exciting, entertaining sports in the state.

My personal goal would be to help restore the public's faith in the fairness of the sport. As a native Californian and a true fan of the sport of horse racing, I am proud that my state is a leader in the industry when it comes to reforms such as the welfare of the horse and the safety of the Jockeys and transparency of the sport for the bettor. I believe we must expand incentive programs to encourage participants to breed, foal, train and run their horses in California.

I will measure my success if the public feels better about spending a day at a California racetrack because they believe the horses are well cared for and not victims of performance enhancing drugs, and that every effort possible was made to make the sport safe and fair for everyone involved.

#### Horse Racing Industry

2. *In your opinion, will SBX2 16 change horse racing in California? How?*

**Senate Rules Committee**

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I believe SBX2 16 will help California compete with other states by providing funds to increase purses and incentives for breeding, foaling, training and racing in California.

3. *What role will the board play in monitoring implementation to SBX2 16's impact on the horse racing industry?*

The board will monitor the implementation of SBX2 16 and provide funding for important programs such as the equine drug testing program and ultimately these additional funds will help shape the future of racing in California.

4. *Does the board have a long-range plan to evaluate the effectiveness of SBX2 16's impact on the horse racing industry?*

The license fee savings gathered from SBX2 16 will go directly to industry stakeholders. The board can exert a direct influence on the industry by establishing conditions that must be met for a person to receive an operational license. Both the short and long-term plan of the board is to make applicants demonstrate how they plan to use the license fee savings to benefit the horse racing industry as a whole.

5. *What steps, beyond this new legislation, would you recommend taking to increase attendance at racetracks? What role should marketing play in the effort to increase attendance and revenues?*

I feel that marketing will play a very important part of encouraging attendance at racetracks. Racing has so much entertainment value to the offer the fan when you take in to account the sheer beauty and excitement of the horses; jockey's are arguably, pound for pound the finest athletes in any sport. Not to mention the beautiful setting of some of California's racetracks.

I also believe that having the Breeder's Cup in California and the international prestige that is associated with the racing series has been very helpful in keeping California at the top of the sport.

6. *What role does horse racing at county fairs play in the future of horse racing in California?*

Fairs that conduct live horse racing are essential to the growth of California's racing industry. The network of fairs helps promote horse racing by providing patrons the opportunity to experience the excitement of racing in person. Also, fairgrounds house important support facilities for larger racetracks and provide the day-to-day training and stabling operations that are needed for the industry to flourish.

## Conflict of Interest

7. *How would you evaluate the effectiveness of the board's conflict-of-interest-rules? Are additional rules needed? If so, please specify.*

I believe the board's current conflict-of-interest-rules are sufficient. I feel the board members and their varied interest in the sport creates a fair and balanced board, representing the different aspects of the racing industry. Horse racing is a unique and ancient sport that has passed down skills and knowledge for generations. As a member who has no financial interest in horse racing, I rely on the experience of the members who do.

## Problem Gambling

8. *How is the board addressing problem gambling? Will any of the new General Fund appropriation under SBX2 16 go toward addressing problem gambling?*

The California Horse Racing Board has joined with other organizations to make the week of March 1<sup>st</sup> 2009 as the 7<sup>th</sup> Annual California Problem Gambling Awareness Week. The goal of the week is to educate and raise public awareness regarding the affects of problem gambling and encourage people that may be suffering from this problem to get help. Also, current law requires that a small deduction from all wagers on horse racing be dedicated to addressing problem gamblers.

## Synthetic Tracks

9. *What has been the experience, to date, in California with synthetic tracks? What levels of reduction in horse fatalities and jockey injuries have been experienced?*

The synthetic tracks in California have been successful. Over the past two years and more than 30,00 racing starts, horse fatalities and jockey injuries have been reduced by approximately 30 percent. And I expect that as we learn more about maintaining the surfaces in different weather conditions, the tracks will continue to become safer for the horses and everyone concerned.

10. *What is the board's timeline for completion of the studies? Is the board including in this range of studies one regarding the possible long-term health effects of jockeys inhaling the material from synthetic tracks?*

The board's study is scheduled to begin in July of 2009 and will examine all track surfaces including synthetic surfaces. The study is designed to provide information on creating a safe work environment for humans and horses.



## Track Closures

### *11. What is the board's role in addressing future track closures?*

The board must play an active role in seeking to prevent future track closures and the impact that track closures have on the industry. By providing leadership to the industry and a comprehensive plan, the board can help navigate through this period of change by ensuring that racing dates are properly distributed and support the overall health of the industry.

### *12. Should the number of racing days be reduced, or should they be divided up among the remaining tracks?*

Live racing is the core of the California horse racing industry. During this difficult period, the board must carefully examine the best way to protect our racing product and establish policies that provide the most opportunities for growing the sport in the future.

I hope these answers have been helpful. Thank you for the opportunity to serve the California horse racing industry and the people of California.

Sincerely,

A handwritten signature in black ink, appearing to read "Bo Derek", with a stylized, flowing script.

Bo Derek

David Israel

David Israel  
Responses  
Horse Racing Bd.

May 12, 2009

Senate Rules Committee  
State Capitol  
Room 420  
Sacramento, CA 95814-4900

Dear Senators:

Following are my responses to the questions you posed in advance of my confirmation hearing for the California Horse Racing Board. I hope you find them helpful.

1. *Please provide a brief statement of your goals. What do you hope to accomplish in your term on the Horse Racing Board? How will you measure your success?*

Horse racing is currently in a dramatic state of transition. My goal in serving on the board is to provide responsible oversight of the sport so that it can grow and thrive for generations, providing jobs and entertainment for thousands of Californians. Success is not only measured in terms of gross wagering or tax receipts, but also in continuing reduction of injuries to jockeys and horses and the expansion of incentives for participants to foal, train and run their horses in California.

If we protect the horses, protect the jockeys, protect the customers and protect the horsemen, we will protect the sport, which, I believe occupies a unique and important corner of society. Horse racing is where agricultural and urban lifestyles merge and come to understand each other. And horse racing is almost the only sport in which men and women compete against each other on equal terms for the same championships. Male and female jockeys compete against each other. Male and female trainers and owners compete against each other. Most sports are segregated by gender. But girls and boys equally can dream of riding at Santa Anita or winning the Breeders Cup or the Kentucky Derby, and preserving that kind of equal sporting opportunity is important to me.

2. *In your opinion will SBX2 16 change horse racing in California? How?*

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SBX2 16 provides a unique and well-timed opportunity for the horse racing industry to redirect money that otherwise would have been assessed as license fees towards increasing purses, commissions, and incentive awards for breeding and racing in California. This should help improve the racing product at California's tracks by injecting much needed funds into breeding and racing programs in the state.

During this tumultuous transitional period in horse racing, it is essential that the legislature, the governor, the CHRB and the industry work together in the best interests of the people to construct a renewed and sound foundation upon which the sport can build a reconsidered and reinvigorated future.

3. *What role will the board play in monitoring implementation of SBX2 16?*

The board will play a significant role in monitoring the implementation of SBX2 16 by consulting with the industry to develop a formula to provide the necessary funding for the board. This will be done to preserve the integrity of the competition and the betting pools, to assure safety programs are evaluated and implemented, and to insure the efficacy of the equine drug-testing program. Additionally, its jurisdiction and supervision of horse racing meetings in the state requires the board to take an active role in helping to shape the future of the industry.

4. *Does the board have a long-range plan to evaluate the effectiveness of SBX2 16's impact on the horse racing industry?*

The license fee savings derived from SBX2 16 go directly to industry stakeholders. In the board's oversight capacity, we can exert a direct influence on the industry by establishing the conditions that must be met to receive an operational license. Both the short-range and long-range planning of the board is to make applicants demonstrate how they plan to use the license fee savings to benefit the horse racing industry as a whole.

5. *What steps, beyond this new legislation, would you recommend taking to increase attendance at race tracks? What role should marketing play in the effort to increase attendance and revenues?*

Increasing attendance at race tracks requires improving the overall racing product and experience for fans. Race tracks have a unique opportunity to compete for the gambling and entertainment dollar. The race track experience isn't only about betting. It is a glorious sport that can be appreciated on many levels – the beauty and grace of the animals, the athletic prowess of the jockeys, the strategy of the races, and for meticulously maintained park-like grounds of tracks such as Santa Anita

and Del Mar, the flamingos of Hollywood Park, the views from Golden Gate. In a difficult economic environment, in the face of bad news generated by Magna's bankruptcy, Santa Anita still had a very successful winter meet in no small part because of the ingenuity of its marketing effort. Every weekend, it seemed, the track gave fans a reason to come out and celebrate the sport. And the free Friday promotion increased attendance dramatically. The promotion did so well that Hollywood Park is trying a free Thursday promotion that seems, from initial returns, to be reaping benefits, also in a troubled economic environment.

But the quality of racing must also be enhanced so that fans have a reason to keep coming back. By providing additional incentives for the best owners, trainers, and jockeys to invest in California's racing industry, a better racing product will produce a better racing experience for the fans.

6. *What role does horse racing at county fairs play in the future of horse racing in California?*

Fairs that conduct live horse racing are vital to the growth and development of California's racing industry. The network of fairs helps promote horse racing by providing patrons throughout the state the opportunity to experience the excitement of race day in person. Additionally, fairgrounds house important support facilities that compliment larger race tracks and provide for the day-to-day training and stabling operations that are needed for the industry to flourish. Fair racing also enables the sport to stay in touch with its roots.

7. *How would you evaluate the effectiveness of the board's conflict-of-interest rules? Are additional rules needed? If so, please specify?*

The board's current conflict-of-interest rules comport with the standard regulations promulgated by the Fair Political Practices Commission and help ensure transparency and accountability. Further specifications establish unique filing classifications for designated employees and provide for the responsible oversight of California's horse racing industry.

Personally, other than the occasional, all too often losing, wager, I do not have a financial interest in horse racing. But I believe the conflict-of-interest policy protects the public while at the same time assuring a level of knowledge, experience and wisdom among board members that is essential for the board's competent operation.

8. *How is the board addressing problem gambling? Will any of the new General Fund appropriation under SBX2 16 go toward addressing problem gambling?*



Recently, the CHRB joined with several other organizations to mark the week of March 1, 2009, as the 7<sup>th</sup> Annual California Problem Gambling Awareness Week. The goal of the week is to educate and raise public awareness regarding the effects of problem gambling and encourage people that may be suffering from this problem to get help. Additionally, current law requires that a small deduction from all wagers on horse racing be dedicated to addressing problem gamblers. This requirement was not impacted by the passage of SBX2 16.

9. *What has been the experience, to date, in California, with synthetic tracks? What levels of reduction in horse fatalities and jockey injuries have been experienced?*

California's experience with synthetic tracks has been successful. During the past two years, which include more than 30,000 racing starts, horse fatalities have been reduced by over 30 percent and jockey injuries have been reduced by approximately the same rate.

Moreover, initial evidence suggests that horses who race and train on synthetics have not lost any competitive advantage when running on dirt against horses that train on dirt. Four of the top five finishers in this month's Kentucky Derby – Mine That Bird, Pioneer of the Nile, Papa Clem and Chocolate Candy – have raced and trained most of their careers on synthetics, three of them in California.

10. *What is the board's timeline for completion of the studies? Is the board including in its range of studies one regarding the possible long-term health effects of jockeys inhaling the material from synthetic tracks?*

The board's study is scheduled to begin in July 2009 as a budgeted item in the 2009-2010 budget. The study will examine all track surfaces, including synthetic surfaces, and is designed to provide information on creating a safe work environment for humans and horses. This will include an investigation into the effects of what is put on, or in, these surfaces, and the impact upon the health of the jockeys, whose well-being, along with the well-being of the horses they ride, is of paramount importance.

11. *What is the board's role in addressing future track closures?*

The board must play an active role in seeking to prevent future track closures and/or reducing the impact that track closures have on the industry. By providing leadership to the industry and a comprehensive plan of action, the board can help navigate through this period of transition by making sure that facilities and racing dates are properly distributed and steering a course that supports the overall health of the industry. In a difficult and fractious economic environment, the board needs to work in

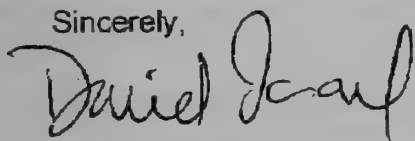
any way it can to maintain a vital horse racing industry. Horse racing provides thousands of jobs of all descriptions and plays a small, but important, role in the cultural life of California, and it is our duty to make sure it is preserved and healthy.

*12. Should the number of racing days be reduced, or should they be divided up among the remaining tracks?*

Live racing events are the core of the California horse racing industry. During this transitional period, the board must carefully examine the best ways to protect our racing product and establish policies that provide the most opportunities for growing the sport in the future. Creating a racing calendar requires a delicate balance of factors, including the capacity of our facilities, the size and quality of racing stock, the condition of the tracks, the demands of the marketplace, and the impact on the work force. But, clearly, if a race track closes, the racing dates should not be discarded. All or most of the dates should be reassigned in a sensible, productive way that accounts for all the variables and best positions the industry to thrive and grow.

Thank you very much for this opportunity to answer your questions and to serve the people of California.

Sincerely,

A handwritten signature in cursive script that reads "David Israel". The signature is written in dark ink and is positioned above the printed name.

DAVID ISRAEL





# Bradley Franklin Responses

**Bradley Franklin**

May 19, 2009

Transmitted by email (evelyn.kazanis@sen.ca.gov) and first class mail

Ms. Nettie Sabelhaus  
Senate Rules Committee Appointments Director  
State Capitol  
Room 420  
Sacramento, CA 95814-4900

**Regarding:** Senate Confirmation, Off-Road Motor Vehicle Recreation Commission

Dear Ms. Sabelhaus:

Thank you for the opportunity to answer questions regarding the May 27, 2009 hearing relative to the confirmation of my appointment as a member to Off-Highway Motor Vehicle Recreation Commission ("Commission").

The questions provided demonstrate an excellent knowledge of land management, environmental stewardship, and natural resource management policy.

I will attempt in respect to the Committee's time, try to provide brief to the point answers. My responses are numerically keyed to your questions.

1. What are your goals and objectives as a member of the Commission, and what do you hope to accomplish during your tenure? How should we measure your success?

The Commission's first objective is to assist the Division in the completion the OHV Program Strategic Plan. Although the draft plan containing six elements has not been finalized as of yet, its current completion date is but a few days away. Pursuant to SB 742, it is critical the Plan be finalized, as the goals provided therein provide the governing principles for the Division to manage the program and the Commission to provide policy assistance.

The Plan should be an evolving strategy to promote responsible environmental stewardship in conjunction with appropriate recreational management.

It is my desire to ensure recreational land access with an over-riding goal to maintain the resource. During my tenure I would personally like to see greater emphasis on educating OHV enthusiasts' in responsible trail use, as well as a higher level of coordination between government and OHV industry in addressing issues facing OHV recreation in California.

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Success can be measured by quantitatively and qualitatively developing a baseline of where the Program currently stands. From time to time, we should reassess the Program strength and weaknesses and take appropriate action for improvement. That way we can truly measure progress.

2. In a difficult economy and a time of significant state budget reductions, how do you, as a member of the Commission, help ensure the effectiveness of the OHV program within scarce resources? How has the state budget crises impacted your operations?

Given the severe economic crisis facing California, it is incumbent upon the Commission to be aware of the status of the OHV Trust Fund and per our duties and responsibilities, to annually review and comment to the Deputy Director and Director on the proposed budget.

The OHV Program uses no general fund dollars but is funded entirely by those who recreate off pavement. With your leadership, the passage of SB 742 resulted in increased funding available to meet the goals of the program. The Commission has been briefed by the Division on the status of the grants program and it is my hope that we can continue to get the word out about funding which is available through this program.

Due to the state budget crisis, there have been travel restrictions placed on the Commission by the administration which resulted in our ability to only travel to Sacramento and nearby areas for our meetings and tour. While it is very important that the Commission hold meetings in different geographic areas around the State, if necessary, depending on the scarcity of resources we may once again be limited in our ability to travel.

Finally, the budget crisis has severely affected the program by the "borrowing" of \$90M from the OHV Trust Fund. These funds were previously not available due to the lack of a shared vision between the Division and the Commission. However, this issue has now been resolved as evidenced by the development of the Strategic Plan. This money is vitally important to funding a variety of very important programs. I cannot stress enough the importance of this money being returned to the program as soon as possible.

3. As a member of the Commission, how do you balance your professional role and personal interests with the need to be objective when deliberating policy decisions as a Commissioner?

Commissioner's shall not have personal bias' affect their decisions. Commissioner's must strictly follow the due process of stakeholder input and put good science and public policy above all else. Having participated in trade association and government rulemaking activities one learns of the "greater good" and their ethical responsibility under the enabling legislation.

As I understand it, as a result of SB 742, authored and passed with your leadership, the Commission no longer has a role in developing policies. Prior to the enactment of Senate Bill 742, the Commission did establish policies for the general guidance of the director and the Division regarding all aspects of the program, but with SB 742, that duty was eliminated. Nevertheless, the Commission still has a duty to be report, comment and advise on activities with regard to the program.

As noted above, because commissioners are required to represent a variety of interest groups, I believe I am expected to bring the benefit of my experience and personal and professional knowledge on any discussion of issues before the Commission. Thus, my energies as a Commissioner will be directed toward providing thoughts, ideas, and suggestions based on my background that I believe will contribute to improved management of the program. It is not the role of a Commissioner to advocate for any one interest, but each Commissioner should contribute to the overall discussion of the Commission as a whole.

If, with regard to any particular issue under discussion, it would be potentially difficult to separate my personal and professional role from that of the Commission as a whole, I would discuss the issues with my fellow Commissioners and provide my input but would recuse myself from any vote that may take place.

4. Do you believe the current Division of responsibilities between the Commission and the Division is effective? Are there changes you would recommend?

Yes, I believe the enabling legislation to be wise. A lessened fiscal responsibility by the Commission is appropriate. The Commission should be a policy body and the Division charged with program management.

I was not a Commissioner in 2008 when the SB 742 was passed, but as the author of the bill, I trust you had your reasons that you felt it important to change the responsibilities and duties of the Commission.

The Commission provides a public forum for all Californians to share their thoughts on the issues facing off highway vehicle recreation and where important topics can be discussed. The Commission must advocate for a balanced program, one which provides OHV recreation and protects the environment.

Since the new Commission first met in December 2008, we have been working together to develop a set of internal policies and procedures relating to the way we do business to help clarify how it wants to proceed with its new roles. Because we have only been working together for a short time, I feel it would be premature to suggest changes regarding the responsibilities of the Division and the Commission. As we move forward, I plan to work with all my fellow Commissioners, the division, and the public to achieve the program about which we can all be proud.

5. Please provide an example of how the Commission and the Division work together.

One of the first items of business on the Commission's agenda when I was appointed was to address the first draft of the division's Strategic Plan. Upon hearing feedback from the public, the Commission provided thoughtful advice to the division, much of which was reflected in the second draft of the plan. During this time, all of the Commissioners attended one of three public workshops hosted by the division. It is my view that this process has gone quite well.

6. What is the Status of the Strategic plan for the OHV program? When do you expect it to be complete?

The Division was requested by June to complete the strategic plan. The 6 points of the draft are definitely on point. I am content with the draft plan as it exists. As the work of



the Division and Commission continue it may be presumed "as work in progress" with common sense enhancements offered as appropriate.

7. How can the program bring together the various interests it is intended to represent to find solutions to OHV issues? Is the OHV program making special effort to reach out? To whom?

It is important the Commission provide a forum at which the various communities who have an interest in the OHV program can feel their comments and opinions will matter and will be heard. This can also be done through Commission tours and workshops. It is important that the Commission and the Division get the word out regarding these meetings and tours so the public can attend, share their thoughts, and provide practical solutions.

8. How can the OHV program work with vehicle and aftermarket manufacturers to educate the public about appropriate and responsible OHV use?

We have tools in place which may prove effective. The Motorcycle Industry Council (MIC) and the Specialty Vehicle Institute of America (SVIA) represents all major powersports manufacturers and over 300 aftermarket companies. Further, Tread Lightly!'s mission is information and education on environmental stewardship. Such partnerships can be productive relative to education on responsible OHV use. We should evaluate existing materials i.e. "Tips" booklets for effectiveness and potential use.

9. The draft strategic plan cites numerous problems regarding insufficient data, including difficulty obtaining and analyzing data from the state Air Resources Board and Department of Motor Vehicles. How do the Division and Commission plan to address these issues?

I would trust Mary Nichols, Chair of the ARB and the Executive Officer, Tom Cachette would be approachable and helpful in resolving this issue. The ARB has been active in the "red/green sticker issue and has regulatory authority as to off highway mobile sources. Further, it is in the best interest of the ARB to have a symbiotic relationship with California Parks to fulfill their roles not only as a state agency, but to fulfill their obligation as to the State Implementation Plan (SIP).

Historically, communication and relations between the ARB and DMV were not the best. As time has passed with the green/red sticker program and VIN "C's and 3's" we have improved communication and program management.

I would recommend pursuing this with Ms. Nichols.

10. Have abuses of OHV riding privileges decreased since the state began to impose fines last year? Please provide numbers, if possible.

While it is difficult to determine the specifics number of incidents that may have occurred, the Commission is concerned about intrusion into closed areas and is committed to working with communities impacted by irresponsible OHV behavior.

In December of 2008, the Commission heard complaints from local residents impacted by inappropriate and sometimes illegal OHV use. As a result of this testimony, the Division met with local residents as well as county and BLM officials to gain a better understanding of the issues of concern and provided a focused enforcement effort in the area.

As a Commissioner and one involved with the motorized recreational industry, I am keenly aware of the importance of responsible OHV use and the importance of providing appropriate areas where OHV use can occur.

Enforcement is a key element to reduce unauthorized use. Enforcement manpower is unfortunately slim with all land management agencies. As a personal observation, the fines are de minimus and in my estimation will have a relatively low disincentive to violations. Further is the LEO's discretion in writing a citation. As to fines, it is suggested we compare levels to the Federal agencies (USFS, BLM, and NPS). Many of their regulations are a misdemeanor with a mandatory appearance required before a Federal Magistrate. Arguably, these might be more of a deterrent, however, Parks are confined by the prevailing structure. I cannot quantify the effect of the fines. Even with hard numbers this must be tempered due to LEO discretion.

11. What other ideas, if any, are the Commission and Division pursuing to address the problem of impact to residents from illegal use?

Illegal use can be curbed in two manners: enforcement and information/education. I addressed these concepts earlier. It appears "responsible" users can avoid illegal use via information and education. Unfortunately, "irresponsible" users are a reality, one that this Commission will need to address in order to preserve OHV opportunities. As problems occur, it is important that residents and people concerned with inappropriate OHV use speak up. I hope that in the near future the Commission will be able to tour an area affected by such use, hear from the parties involved and then perhaps provide some possible solutions. These meetings provide an opportunity to see first hand the areas of concern and hear directly from concerned citizens.

Through the grants program local law enforcement and BLM and USFS can apply for grant money to help address and solve some of these issues.

12. Given the climate change goals of AB 32 and SB 375, as well as evidence of the negative health effects of air pollution from mobile sources, who do you recommend incorporating air quality and climate change concerns into the OHV Program?

The Commission only began its current schedule of meetings in December 2008. Thus, there are a number of issues that have not yet been scheduled and addressed in any depth. I believe that this is one item that is important and will need to receive ongoing attention by the Commission. At our last Commission meeting (May 9<sup>th</sup>), the Commission discussed the application of alternative energy sources regarding OHV use.



Of course the OHV Program and emissions related to the program and the vehicles involved are but one component of the larger effort regarding climate change. One of the objectives of the division's Strategic Plan is to address the reduction for carbon emissions through its operation of the SVRAs. The Commission was briefed on this issue at one of their meetings, and should continue to request periodic reports from the Division on progress toward achieving the various goals and objectives in the plan.

13. What steps, if any, have the Commission and the Division taken to improve data collection and analysis in terms of OHV emissions?

Without being redundant, I think significant mutually beneficial outreach and interface with the ARB, EPA, and DMV is prudent and definitely should be a priority item. As mentioned above, the Commission had a general discussion regarding this issue at the last Commission meeting in May. Given the goals in the Strategic Plan to acquire more data and strengthen relationships with other governmental entities in the months ahead, I would anticipate discussion about this issue at future Commission meetings. For future meetings, it is my understanding the Commission will be briefed by the Division on the development of the implementation plans associated with the goals and steps to be taken.

14. Does the Commission plan to improve its Web site to provide more information? If not, why not? If so, how?

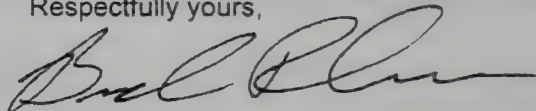
In this age, web sites are proving to be a critical form of communication. This will only expand in the future. It goes without saying maintenance and enhancement of the site is a key component of the program.

As with all program components, return on investment must be analyzed. The OHV Program Strategic Plan is out of necessity complex and multi-faceted. In today's economy, judicious care must be taken in balancing Plan needs and allocating resources and budget appropriately. In the future, it is my hope that greater use of the website should be made that will provide more information about the Commission and its activities.

I sincerely thank the Rules Committee for the opportunity to respond to the questions which confront the Division and Commission in these difficult and important times. I trust that this has helped to answer any questions the Senate Rules Committee may have regarding my appointment to the Off-Road Motor Vehicle Recreation Commission

In the event you should have any questions please do not hesitate to contact me at (office) 714/761-7842, (mobile) 909/286-7972 or e-mail at (brad\_franklin@Yamaha-Motor.com).

Respectfully yours,



Bradley R. Franklin

May 19, 2009

Kane Silverberg  
Responses

Ms. Nettie Sabelhaus  
Senate Rules Committee Appointments Director  
State Capitol  
Room 420  
Sacramento, CA 958-4900

RE: Senate Confirmation, OHV Commission  
Sent by e-mail and USPS to your office.

Dear Ms. Sabelhaus,

Enclosed you will find the answers to The Senate Rules Committee's questions regarding my appointment by the Governor to the State Off-Highway Motor Vehicle Recreation Commission.

As a new member to this commission, I will tell you that the questions you have asked are very thorough and encompassed all facets of the Commission and Division Responsibilities and Duties.

Being new to the Commission and Division I have done my best to answer the questions for this appointment. Thank you for taking the time to review this information. I have prepared my responses in the order that you had the questions listed in.

### Statement of Goals

1. *What are your goals and objectives as a member of the commission, and what do you hope to accomplish during your tenure? How should we measure your success?*

I believe it is important for the program to continue to grow and provide additional areas for people to have OHV opportunity. This will give people alternatives and reduce the pressures on private lands. I would also like to see improved communication and interaction with stakeholders in addressing issues such as safety and responsible OHV use.

Being part of the current commission that is working with division to get the Strategic Plan completed by June of 2009 will be significant accomplishment and help shape what the Division and Commission focus on for years to come. The completion of the Strategic Plan will be a great first measure of success for Division and Commission.

Another measure of success will be if the Division/Commission are able to create new OHV resources, expand existing OHV resources or in some cases just keep the existing resources open.

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I have only heard stories of how the "old" OHV Commission was not able to make much forward progress in it's duties to sustain existing opportunity, protect, preserve, and enhance existing OHV opportunities in a manner that ensures well managed, interesting, and high quality experiences, and address the environmental impacts that may be associated with those activities. Of course at the same time be pro-active with Division in helping to creating new opportunity where it is needed.

So it would appear it would be rather easy to measure the new commission success when comparing to the previous commissions efforts. I understand that we have SB 742 to thank for these significant changes that will enable the current commission carry out its duties much more effectively.

2. *In a difficult economy and a time of significant state budget reductions, how do you, as a member of commission, help ensure the effectiveness of the OHV program within existing scarce resources? How has the state budget crises impacted your operations?*

My first Commission meeting was on December 3, 2008. We met again in March but due to travel restrictions, we could only meet in Sacramento. Not being able to travel to all the important OHV sites to experience and get a first hand account of what the situation is "on the ground" doesn't help when making decisions and having discussions about current events and important matters regarding OHV in California.

I understand that the OHV Trust Fund is a special fund, and thus not subject to the restrictions of the general fund, i.e. we are a self-funded organization that should give us many merits vs. having to be supported by the general fund.

With the current economic uncertainty, the Commission must nevertheless be fiscally responsible. It is my understanding that the Division is closely monitoring the revenue sources of the fund for any changes. The commission has asked the Division to report at the meetings regarding the current state of the OHV Trust Fund and steps, which may be needed to respond to potential changes in revenue. Regardless of the current economic difficulties, it will always be my position to be as fiscally efficient and as smart as we can with all OHV funds at all times.

I am sure you understand that I am deeply concerned about the sweep of \$90M in OHV Trust Funds, which has occurred. While it is technically a "borrowing" of funds, history tells us, those who pay into the fund have reason to be very concerned. OHV funds need to be used to purchase open space for OHV recreation, OHV safety and environmental education programs. The OHV community who pays into this account has just had their green sticker fees double. These folks deserve to have this money available to them. The funds must be returned when there is a significant need and must be repaid on time for Division/Commission to carry out required duties.

In addition, the commission has been reviewing and commenting on the Strategic Plan developed by the division. A primary purpose of the strategic plan is to set out goals and objectives for the program and to identify future budget resources which might be needed to achieve these goals and objectives. I look forward to reviewing how the division proposes to implement these goals and objectives.

## Commission

3. *As a member of the commission, how do you balance your professional role and personal interests with the need to be objective when deliberating policy decisions as a commissioner?*

For most of my life I have been involved with outdoor recreating with family and friends. We have traveled the State enjoying both motorized and non-motorized recreation. I see areas that are well managed and those that are not. I have also seen many closures and restrictions that have changed OHV recreation in this state. I believe that I can and will be able to remain objective as a member of the Commission by keeping in mind the overall responsibility of the program to provide sound management solutions for OHV recreation, balanced with responsible and respectful environmental management.

I am but one of nine voices who will contribute to the overall discussion of issues to be discussed by the commission. I will share my lifelong experiences as an OHV enthusiast and my care and concern for the sustainability of the environment. The Commission was established to provide a place where the public could have their voices heard. If we do not listen to all members of the public, the Division, and our fellow Commission members then we do a disservice to the program as a whole. I believe in having input from all sources so information can be carefully reviewed creating an objective dialog and decisions.

## The Commission and the Division

4. *Do you believe the current division of responsibilities between the commission and the division is effective? Are there changes you would recommend?*

Again being a new Commissioner, I thank you for passing SB 742 as it seems to have broken up the "grid lock" and dysfunction of the previous commission's that I have only heard tales about.

As I have stated I have only been on the commissioner a short time but so far, I think the Commission and the Division are working well together. It's important that we move forward in a positive way post SB 742 and provide a place where important topics can be discussed. My understanding is that the advisory role of the OHV Commission is now similar to that of the State Park and Rec Commission. The OHV Commission must be an advocate for a



sustainable program or I believe the OHV program would cease to exist in a short time.

I must assume the Commission's present duties came about as a result of a thorough vetting of the changes proposed and enacted with SB 742. I do not have the specific background of the reasons for these changes so it is impossible for me to comment on whether the changes to the Division's responsibilities are effective. It is my intention, of course, to respect the legislative changes in the duties and give the revised role of the Commission every chance to succeed.

At this time I think it's premature for me to offer any recommendations for change. I can say it has been my experience so far, with Division, that I believe through the course of time the commission will be able to work with Division effectively to make the necessary changes to enhance the Commission ability to be more productive in carrying out its responsibilities and obligations.

5. *Please provide an example of how the commission and the division work together.*

The Commission and the Division share the commitment to "get out on the ground" to visit and tour the many OHV sites in California. The Division has arranged tours to go along with our meetings, which has been very helpful. This gives the Commission "first hand experience" on the issues at hand and demonstrates the successes and failures before us at the various California OHV Parks.

The Commission and the Division have been working together on the Strategic Plan. I have observed a great respect that Division and the Commission share for one another. All of the Commissioners attended one of the workshops hosted by the Division to hear and identify the concerns of the communities.

The Commission has identified sub committees, which are working on a variety of issues from land acquisition to education. The Division has been helpful in providing requested materials for the success of these committees. Lastly, the Division does a great job of allowing us access to their Staff to get many questions answered and important information made available.

## OHV Program Strategic Plan

*What is the status of the strategic plan for the OHV Program? When do you expect it to be complete?*

At the December meeting we had a Division briefing the on the status of the Strategic Plan. It was not in our authority to grant an extension. According to the Division, the Strategic Plan will be completed by June 2009.

6. *How can the program bring together the various interests it is intended to represent to find solutions to OHV issues? Is the OHV Program making a special effort to reach out? To whom?*

One of the most important things we can do is get out on the ground to see and hear about the OHV program from the folks directly involved. The meetings should be held throughout the State to get a good cross section of interested users, folks and organizations etc. The OHV community pays for the program and needs to see a Commission who is working to address the issues of concern.

Education is a large part of bringing the various interests together. This is one of the key goals in the Strategic Plan.

7. *How can the OHV Program work with vehicle and after-market manufacturers to educate the public about appropriate and responsible OHV use?*

All stakeholders must come together to learn more about one another and then must work together to come up with meaningful change. Vehicle manufacturers must stress OHV recreation, which is safe and environmentally responsible. We need to support our kids in their desire to ride and take their desire to be outside as a positive and an opportunity to educate.

8. *The draft strategic plan cites numerous problems regarding insufficient data, including difficulty obtaining and analyzing data from the state Air Resources Board and Department of Motor Vehicles. How do the division and commission plan to address these issues?*

The OHV community cares about clean air and wants to work with CARB to achieve such goals. However, decisions made in a vacuum do not achieve real success on the ground. In the Strategic Plan the Division identifies the need to work with CARB and to facilitate a meaningful dialogue. I fully support this goal.



**OHV Program: Enforcement**

9. *Have abuses of OHV riding privileges decreased since the state began to impose fines last year? Please provide numbers, if possible.*

OHVs recreating in closed areas has been discussed at both of the meetings we have held. The Division reported to us that they have been providing technical advice on a piece of legislation moving forward which will allow DMV to track citations issued for violation of closed areas. Once this legislation passes, we will be able to determine the rise or fall in violations by reviewing DMV data.

Until we are able to see the numbers of citation issued, it is difficult to determine if abuses have decreased.

10. *What other ideas, if any, are the commission and division pursuing to address the problem of impacts to residents from illegal OHV use?*

After hearing of potential trespass issues from residents at our first meeting, we asked the Division to investigate and report back to the Commission. The Division met with local authorities, and sent rangers from the OHV Division to patrol and monitor the area on the weekend, which was reported to be the busiest of the year for OHV use. The Division then reported their findings back to us, and we asked them to continue coordinating with local authorities to monitor the situation. I believe this proactive approach to reports of problems is a productive model, which we can continue to use in the future. This is also an indicator that with the OHV opportunities shrinking there is more of a chance of illegal OHV use especially where it once existed.

**Off-Highway Vehicle Recreation in a Post-AB 32 World**

12. *Given the climate change goals of AB 32 and SB 375, as well as evidence of the negative health effects of air pollution from mobile sources, how do you recommend incorporating air quality and climate change concerns into the OHV Program?*

I am very encouraged by the focus on this issue, which is demonstrated in the Division's Strategic Plan. In particular, the focus on alternative fuel vehicles shows promise for improving air quality. I personally have had the opportunity to test ride one of the electric motorcycles which the Division is considering for purchase, and found the vehicle to be very

quiet and, of course, non-polluting. KTM one of the largest OHV Motorcycle manufacturer will be coming out with an electric model in ~ 2011. All the major Motorcycle Manufactures are also developing Fuel Injection that will make the vehicles more efficient and cleaner.

The Division has also informed me that they have taken a lead in State Parks and retrofitted all of their heavy diesel trucks with the new emission controls, which capture particulates. The rest of State Parks has not yet been able to retrofit their fleet, and should look to the OHMVR Division as a model for this effort.

The Strategic Plan also includes other interesting areas on which to focus to reduce harmful emissions, such as locating future OHV parks closer to urban settings, which would reduce the amount of fuel burned in commuting to the riding area. I look forward to working with the Division in addressing this issue.

13. *What steps, if any, have the commission and division taken to improve data collection and analysis in terms of OHV emissions?*

I frequently ride at Hollister Hills SVRA, and I know that they regularly monitor air quality for dust. They also have a very rigorous sound-testing program. This is an issues identified in the SP as a goal, to increase air and sound monitoring at all of the parks operated by the Division.

#### **Public Access to Information**

14. *Does the commission plan to improve its Web site to provide more information? If not, why not? If so, how?*

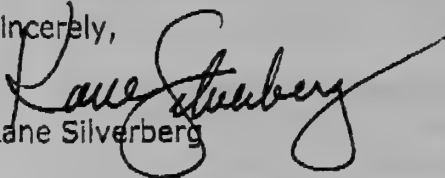
The Division, as staff to the Commission, maintains a web site, which includes information on all aspects of the Program, including the OHMVR Commission. We will be working with the Division to include more information on this site as we move forward. One recent significant change is that we have established an e-mail account where the public can send messages directly to the Commission; [ohvcommission@parks.ca.gov](mailto:ohvcommission@parks.ca.gov)



Thank you for taking the time to review my answers to the very important questions posed regarding the OHV Commission / Division. Knowing just a bit about the previous Commission and what transpired I understand how Important it is for you to have a functioning well balanced OHV Commission that can Help guide Division in a proactive/healthy manner that serves the people of California properly. As I mentioned I am new to this commission and I feel I have much to learn and get a complete understanding of the many issues that surround OHV. At the same time I have much to offer and plan on being a very positive force on the OHV Commission. Please let me know if you have any questions or concerns.

Thank you for this opportunity to serve on the California OHV Commission. I look forward to hearing your findings, questions or concerns the Senate Rules Committee may have on my Appolntment to the OHV Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Kane Silverberg", with a large, stylized flourish extending from the end of the name.

Kane Silverberg

CALIFORNIA LEGISLATURE

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CHAIRMAN

April 24, 2009

Paul J. Slavik

Paul Slavik  
Responses

Dear Mr. Slavik:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Off-Highway Motor Vehicle Recreation Commission (commission) on May 27, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by May 15<sup>th</sup>.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 15<sup>th</sup>.

**Statement of Goals**

The commission is the policy making body for the Off-Highway Motor Vehicle (OHV) Recreation Program, under the Department of Parks and Recreation. The commission is made up of nine members. Five are appointed by the Governor (subject to Senate confirmation), two are appointed by the Senate, and two are appointed by the Assembly. In 2007 the sunset of the OHV Recreation Act and OHV Trust Fund was extended to January 1, 2018.

1. *What are your goals and objectives as a member of the commission, and what do you hope to accomplish during your tenure? How should we measure your success?*
2. *In a difficult economy and a time of significant state budget reductions, how do you, as a member of commission, help ensure the effectiveness of the OHV program within existing scarce resources? How has the state budget crises impacted your operations?*



### **The Commissioners**

Statute requires the commission to represent a broad spectrum of interests, including OHV users, biological and soil scientists, groups or associations of predominantly rural landowners, law enforcement, environmental protection organizations, and nonmotorized recreation interests.

3. *As a member of the commission, how do you balance your professional role and personal interests with the need to be objective when deliberating policy decisions as a commissioner?*

### **The Commission and the Division**

In 1971 the Legislature established the Off-Highway Vehicle Program to manage off-highway recreation in a manner that would also protect the state's natural resources. In 1982, both the Division of Off-Highway Motor Vehicle Recreation (division), within the Department of Parks and Recreation, and the commission were created to implement the program. The division was charged with direct management of the program, while the commission was given more of a policy role, along with approval authority for capital expenditures, grants, and cooperative agreements.

Two years ago legislation was passed (SB 742 (Steinberg), Chapter 541, Statutes of 2007) that significantly revamped the commission. SB 742 stripped the commission of its authority to approve capital outlay expenditures and approve grants, with the intent of strengthening the commission's policy making responsibilities while eliminating its fiscal role.

4. *De you believe the current division of responsibilities between the commission and the division is effective? Are there changes you would recommend?*
5. *Please provide an example of how the commission and the division work together.*

### **OHV Program Strategic Plan**

SB 742 requires the division to complete a strategic plan, which must be reviewed by the commission by January 1, 2009. At its December 2008 meeting, the commission reviewed the division's draft strategic plan. At that meeting, it was announced that due to a lack of commission quorum, budget issues, and difficulties in scheduling meetings, the commission gave the division an extension until June 2009.

The draft strategic plan outlined six goals.

- Provide for sustainable use by mitigating threats to the existing system of OHV opportunity
  - Develop an organized staff dedicated to development, establishment, and implementation of the OHMVR Program
  - Achieve a highly informed and educated OHV recreational community committed to responsible use and environmental stewardship
  - Establish and maintain highly cooperative relationships with individuals, organizations, industry, and government related agencies to resolve disputes, and advance the mission and goals of the program
  - Improve the quality and quantity of information available to support sound decision making
  - Add new, or increase use of existing, opportunities where appropriate and needed to replace loss of existing opportunities and respond to changing and future demand
6. *What is the status of the strategic plan for the OHV Program? When do you expect it to be complete?*
7. *How can the program bring together the various interests it is intended to represent to find solutions to OHV issues? Is the OHV Program making a special effort to reach out? To whom?*
8. *How can the OHV Program work with vehicle and after-market manufacturers to educate the public about appropriate and responsible OHV use?*
9. *The draft strategic plan cites numerous problems regarding insufficient data, including difficulty obtaining and analyzing data from the state Air Resources Board and Department of Motor Vehicles. How do the division and commission plan to address these issues?*

### **OHV Program: Enforcement**

SB 742 provides for fines for unlawful operation of an OHV in an area closed to OHVs—a \$50 fine for a first offense as an infraction, and \$75 for a second offense within seven years as a misdemeanor.

10. *Have abuses of OHV riding privileges decreased since the state began to impose fines last year? Please provide numbers, if possible.*
11. *What other ideas, if any, are the commission and division pursuing to address the problem of impacts to residents from illegal OHV use?*



## Off-Highway Vehicle Recreation in a Post-AB 32 World

Two years ago, the Legislature passed and the Governor signed landmark legislation, AB 32 (Núñez), Chapter 488, Statutes of 2006, to limit the emission of greenhouse gases in California. Last year, after extensive negotiations, the Legislature passed and the Governor signed legislation intended to implement AB 32. SB 375 (Steinberg), Chapter 728, Statutes of 2008, requiring each regional transportation plan to include a Sustainable Communities Strategy designed to achieve the targets for greenhouse gas emission reduction established by the state Air Resources Board.

The OHV Program's draft strategic plan notes that, "The Plan seeks to establish goals and objectives whereby the division will take steps to reduce the carbon footprint of the [OHV] Program" (p. 8). The plan also notes that although alternative fuel OHVs are being developed, there are a certain number of OHVs which do not meet the emission requirements set by the Air Resources Board ("red sticker vehicles"). According to the plan, "Greater efforts are needed to find ways to measure and analyze emissions from red sticker vehicles" (p. 23).

12. *Given the climate change goals of AB 32 and SB 375, as well as evidence of the negative health effects of air pollution from mobile sources, how do you recommend incorporating air quality and climate change concerns into the OHV Program?*
13. *What steps, if any, have the commission and division taken to improve data collection and analysis in terms of OHV emissions?*

## Public Access to Information

While the division's Web page provides a fair amount of information, the commission Web site is quite sparse, listing only a very brief description of what the commission does, commissioner biographies, and an archive of past meetings. There is no explanation of how the commission is funded, what its mission is, or its role vis-à-vis the division.

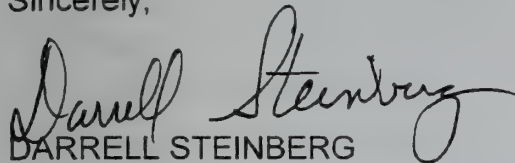
14. *Does the commission plan to improve its Web site to provide more information? If not, why not? If so, how?*

Paul J. Slavik  
April 24, 2009  
Page 5

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

  
DARRELL STEINBERG

DS:ER





Paul Slavik  
Responses

Senate Rules Committee  
Darrell Steinberg  
C/O Nettie Sabelhaus  
Senate Rules Committee  
Appointments Director  
Room 420  
State Capitol  
Sacramento, CA 95814

Subject: Paul Slavik, member OHMVR Commission.  
Regarding your request for responses to your letter dated April 24, 2009

#1

My goal is to attend as many Commission meetings and tours as possible as well as participate in assigned sub-committees. My objective is to utilize my extensive background and contacts in OHV recreation to further the stated mission of the OHMVR Division. I will act as a conduit between OHMVR Division and the OHV community, especially in Southern California. The Strategic Plan identifies goals that I have always thought were important. The staffing and increase opportunity goals are two that I will emphasize. Within the OHV community are young, smart individuals who would be excellent candidates for OHV staff positions. I firmly believe that OHV recreation practiced responsibly is a gateway to appreciation of the outdoors which becoming a lost art in our urban environment. I intend to help bring that message to the OHV community and find ways to direct these folks to this field. OHV trespass on private property is a huge issue statewide but especially in and around LA County. We must find appropriate sites that the public can recreate on legally. I am a member of the LA County OHV Advisory Committee for the purpose of finding these sites for a underserved OHV community.

Senate Rules Committee

MAY 21 2009

Appointments



The effectiveness of these activities can be measured by polling OHMVR staff and other stakeholders.

#2

As an OHV Commissioner I am keenly aware of the shortfall in resources. The immediate result of the budget crisis was the travel restrictions which kept the Division from holding Commission meetings throughout the state. Additionally, I am concerned the Division may not have the funding available to move forward with the implementation of key goals and objectives of the Strategic Plan. The Strategic Plan provides the future direction of the Division. Many of these areas will require resources that may not be available in the future if the economic crisis in California continues.

Volunteer programs are an effective strategy for maintaining a presence on OHV trail systems. I was a member of the San Bernardino National Forest Association which had a very effective OHV Volunteer Host Program. There are several of these programs around the state. I believe these type of programs will result in savings for the land managers. They will have a larger number of people patrolling trails, passing out maps and being the additional "eyes and ears" on the ground. This will reduce illegal activity where implemented.

Finally, the state budget crisis has had a significant effect on our program with the recent sweep of \$90 million of OHV Trust Funds. This is a special fund; it is not general fund dollars. Without this funding, the OHV program can not move forward to purchase lands for OHV recreation. This is very problematic due to the fact that at this time land prices are falling and the opportunity to purchase land is high and we don't have the funds.

#3

I fully understand the competing needs of society as they relate to OHV recreation. Before I retired I was involved in many collaborative processes. I was co-chair on the California Roundtable on Parks Recreation and Tourism, was a member of

the California OHV Stakeholders Group, and I worked with American Trails, a national group of inclusive trail users. I do not own a OHV and in fact have many other interests that occupy my time. I believe my past professional background gives me a unique perspective from which to work with other commissioners to find balanced solutions.

#4

I have been participating in Commission meetings since 1990 so I was well aware of the dysfunctional nature of the Commission prior to the implementation of SB742. It always seemed to me that charging the Commission with financial responsibilities was ineffective at best. Even the most responsible commissioners did not fully understand all the implications and unintended consequences of their decisions. Post SB742 the Division can now make professional budget decisions.

#5

A good example of the Commission and the Division working together was at the last meeting when we were discussing the importance of the "greening of OHV", one of the four strategic themes found in the Strategic Plan. The exchange of information between individuals in the private and public sector, I believe, resulted in a much broader dialogue that could lead the Program into the future.

In addition, at each of our last two meetings we have toured an OHV facility. It is very important that the commissioners and staff get out and see what is really happening on the ground.

#6

The statute provides for the Commission to review and comment on the Strategic Plan. The commissioners discussed the Strategic Plan at two Commission meetings. I also attended two of the three Strategic Plan workshops which were held. The Division is moving forward to submit the plan in June 2009.



#7

The Division is discussing the feasibility of forming regional stakeholder groups that will act as a forum for various OHV interests. The commissioners are working with the Division to find ways to encourage the public to attend Commission meetings. I am big supporter of workshops because it enables the Commission and the public to engage in a more meaningful dialogue and exchange of ideas.

Also the Division intends to schedule Commission meetings around the state both to familiarize the commissioners with OHV facilities and issues as well as offer the local population an opportunity to attend meetings.

Additionally I have been discussing with staff alternative formats for Commission meetings that will encourage more public participation.

#8

I am a retired employee of American Honda Motor Company and am very familiar with the workings of the OHV Industry. I have many contacts in the Industry and OHV press. The Industry has several initiatives to educate its customers about responsible use; however, the current economic downturn has resulted in some of those programs being cut back. For example, Honda has closed all but one of its training centers. All of those training centers had an environmental education center attached to them. Currently there is another individual on the Commission who currently works in the Industry. This is a positive as it gives the Commission more expertise and representation within the M/C Industry than at any time in the past. Recently Honda offered to supply some appropriate sized motorcycles to the Off-Road PALs Program at Hungry Valley SVRA. This is a great example of a private public partnership.

I might add that the OHV Industry was helpful in providing information that helped write the legislation to regulate OHV sound.

#9

The Strategic Plan identifies two goals regarding this issue. It is important for public agencies to identify problems and talk with one another to come up with meaningful solutions. CARB is not well known for it's willingness to engage in meaningful dialogue and yet they make decisions which can really affect the Program. It is important that all parties talk with one another. If we are going to make good decisions, we need to be informed. This speaks to another goal in the Strategic Plan – acquire and organize good data in order to make good decisions. It could be a win-win if the Division, DMV and CARB work better together.

#10

I do not know if we have seen a significant change in the number of OHV offenses. That would be very difficult to quantify. Perhaps it would be a good agenda topic. However, I do believe that education should be a top priority paying special attention to the increasing use of OHVs by minorities. This is why I have worked so hard over the years to advance the State Park CAL PALS Program in cooperation with local police departments.

#11

The problem of impacts to residents from illegal OHV use require significant research. This problem has a wide range of causes but the primary cause in my opinion is the extent of urban interface on public lands. Simply put, some local residents who own OHVs move into rural communities because they can recreate on dirt roads while others move to the desert for peace and quiet. The combination ends up with conflict.



This very situation was reported by Division as a result of a number of complains from some local residents of a Southern California desert community.

One of the solutions to this problem would be to provide appropriate and legal trails in the area and guide as many of these users away from communities as possible.

#12

At the last Commission meeting we spoke about the “greening of OHV”. In addition, the Strategic Plan calls for the reduction of the carbon footprint at our SVRAs. This can be done by modifying some of our OHVs and equipment. For example, some of the State Park vehicles might be converted to natural gas, others can run on E85.

At one of our tours, we visited the Environmental Training Center at Prairie City which uses solar power and runs off the grid. We also rode some of the electric dirt bikes.

Also, we should provide urban OHV parks that will keep some users from driving long distances to operate their OHVs.

Many of the communities are also ready to help plant more trees in SVRAs.

#13

As I mentioned before, one of the goals of the Strategic Plan is to develop better avenues of communication between public agencies and for better collection of data that the agencies may have but don’t share. I anticipate in the months ahead the Commission will be briefed on the implementation plans for the goals identified in the Strategic Plan.

#14

One of the roles of the Commission is to provide a forum by which the public can have a voice and learn about what is going on in the OHV community. The web is one way we can communicate with the public. If there are suggestions for improving the Commission

website, I look forward to hearing them. Recently we did create a link on our webpage where the public can send an email directly to us. A Division staffer is responsible for forwarding those contacts to the individual commissioners.

Thank you for this opportunity to express some of my views.



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## QUESTIONS FROM SENATE RULES COMMITTEE

Due to Senate Rules by April 27, 2009

### Statement of Goals

1. **What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?**

The Santa Ana Region has a tradition of collaborative issue resolution – it would be my intent to continue that style. Specific initiatives include: (1) the re-issuance of the ocean discharge permit for the Orange County Sanitation District, which has been very controversial in the past, but with the requirement for them to complete their transition to secondary treatment, this may go easier; (2) the re-issuance of Stormwater permits for Orange County, Riverside County and San Bernardino County (extensive stakeholder negotiations, but still might be contested); (3) adoption of the TMDL for selenium in the Newport Bay Watershed (exceptionally difficult TMDL). All of these will require not only solid technical analysis but collaboration between SARWQC and the permittees.

2. **What do you believe are the most serious issues facing your board?**

1. Significant difficulties with implementing all of the board's water quality responsibilities with a little less than 50% of the funding needed to do the work, as estimated by the Legislative Analysts Office.
2. A huge adverse salt balance is the region's most important water quality matter. Increasing salt levels in ground and surface waters have severe water supply and beneficial use considerations, including enormous economic consequences
3. Perchlorate contamination in the groundwater underlying Rialto is an important water quality issue, but because of litigation, that's about as much as can be said.

3. **How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues, such as beach closures, sewage spills, or the overall quality of water quality in rivers and streams in your region?**

1. Public hearings held around the region.
2. The regional board maintains a very detailed web site that is crammed full of information concerning water quality and regulatory issues in the region. There are links to sanitary sewer overflow reports (spills) and the extensive data bases in our California Integrated Water Quality System and Geotracker

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databases. In addition, this region is the only region to do region-wide re-calculations of ambient water quality on a tri-ennial basis, which is essentially a real-time re-calculation of groundwater quality throughout the entire region. All of this information is available to the public in an electronic, easily-downloadable format.

3. Open channels for the media to have access to current projects and information.

#### **State and Regional Board Roles**

4. **Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board staff might better assist you?**

1. At our board, the Executive Officer is available to provide any assistance necessary for us to get the information board members require to better understand complex issues. Always being cognizant of rules related to ex-parte communications, the Executive Officer can provide staff members, when appropriate, to provide additional background information. In addition, extensive written support materials are provided to board members to help better understand complex matters.
2. The State Board provides the regional board's legal counsel to assist with legal matters affecting board activities. Other than legal assistance, it is typically not necessary to get additional input from staff of the State Board.
3. We are also fortunate to have lead consultants on the various working groups that make informational presentations on the status of each issue.

5. **What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?**

Briefings by the Deputy Chief Counsel of the State Board concerning roles and responsibilities of regional board members; conflict of interest training interactive web site at Fair Political Practices Commission; briefings during Water Quality Coordinating Committee meetings by State Board Chief Counsel

In addition to that training, the regional board's Executive Officer, Assistant Executive Officer and regional board legal counsel always pay very close attention for any conflicts that might arise. I have not had to withdraw from voting on any issues since being appointed to the Board.

6. **What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?**

It is clear that our board chair, Carole Beswick, has established a very successful working relationship with the State Board members. In addition, I am unaware of any contentious issues in play between our regional board staff and the State Board staff. In the interests of coordination, State Board staff are invited to participate in many of the region's stakeholder task force efforts related to emerging contaminants, recreational bacteria standards and salt management efforts. In the Santa Ana Region, stakeholder participation in basin planning, emerging contaminants, and the development of TMDLs is extensive. This is a very open and interactive process, and as such, accountability is transparent.

One concern is that we go through an extensive stakeholder process and then the State Board takes an action that nullifies our work without do process – i.e. recreational bacteria standards is something we are investing a lot of energy in evaluating – I would hope the State Board would not act without our input.

- 7. How is your board able to address, with its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need, due to current funding levels and constraints on resources?**

The regional boards are funded at approximately 50% of the level necessary to accomplish all of their responsibilities, according to work completed by the Office of the Legislative Analyst. So, the boards are not able to address all of their responsibilities. There are many items that receive inadequate attention, and as such, are delayed or not accomplished: development of TMDLs, re-issuance of waste discharge requirements and inspection of waste discharges for non-NPDES facilities, all basin planning work, dairy inspection work, and groundwater cleanup projects are all inadequately funded.

### **Mercury in Largemouth Bass**

- 8. You have been appointed to the recreation, fish and wildlife position on the board. What background do you have in these areas?**

As a native of Big Bear Lake and the founder of the Big Bear Friends of the Forest that evolved into the current Big Bear Discover Center Interpretive Association I have a long commitment to the recreational use of the National Forest. As the owner of Pine Knot landing a marina in Big Bear Lake I have continual interaction with the recreating public and the various agencies that are charged with regulating those activities.

- 9. What steps has the board taken to address the issue of high mercury levels in largemouth bass in Big Bear Lake?**



The board staff is working with a stakeholder task force on TMDLs for Big Bear Lake, including one for mercury. Staff will schedule workshops in the future to initiate the public participation work and bring this matter to the wider public and the regional board.

## **Dairy Pollution**

- 10. How does your board evaluate the effectiveness of the region's efforts to address the water and groundwater impacts from dairies in the Chino Basin? Are you satisfied with the results thus far?**

The Board recently adopted Maximum Benefit water quality objectives for the Chino Basin to allow the Inland Empire Utilities Agency and the Chino Basin Watermaster to implement an integrated water supply and groundwater management plan that addresses groundwater impacts from dairies in the Chino Basin in a manner unique in the state. That is, the Maximum Benefit program allows for an integrated program that includes an extensive series of extraction wells and desalting facilities for addressing the groundwater impacts from the Chino Basin dairies. This program actually reverses the gradient of the groundwater in the Chino Basin, such that the dairy-impacted groundwater underlying the dairies is drawn back from the Santa Ana River, thereby protecting surface water quality from the historical dairy impacts, and that groundwater is extracted, treated by multiple desalting facilities, and the resultant product water used to supplement local water supplies. Brines from the desalting are directed to the Orange County Sanitation District for treatment.

I am satisfied with the commitment by the participating agencies and the overall commitment to these long term objectives.

- 11. How will the Engineered Waste Management Plans and Nutrient Management Plans improve water quality in the region? How is the board using the plans?**

During the 1970's, this board was the first to adopt waste discharge requirements for all dairies in the region. The latest iteration of these requirements include a provision that all dairies must prepare and implement engineered waste management plans to contain all runoff, including storm water, from up to a 25-year, 24-hour storm. Dairies must also dispose of waste products in compliance with Basin Plan requirements. The board requires all dairies to have adequate retention and disposal facilities that provide enormous benefits for downstream water quality. All dairies must have facilities designed by registered professional engineers, and the engineers must certify that the facilities have been constructed in conformance with approved plans.

**12. What are the challenges facing the board for monitoring, compliance and enforcement?**

Inadequate resources for the region's dairy regulatory program are the biggest challenge facing the regional board for this program. Funding is available for only two staff members to deal with more than 300 dairies. The region is fortunate that outside assistance is provided by U.S. EPA to help with inspections and enforcement, and NRDC has provided additional funding, through litigations settlements, to fund inspections by the engineering contractor for U.S. EPA.

**Perchlorate Groundwater Contamination**

**13. What is the status of the contaminated groundwater in and around Rialto, Colton and Norco?**

Perchlorate in groundwater in these areas comes from two sources. Historically, Chilean Nitrate fertilizer containing significant concentrations of perchlorate was imported and used on citrus crops in the Inland Empire from the 1800's through World War II. This accounts for the widespread occurrence of perchlorate in historic citrus areas within the region. In addition, industrial discharges of perchlorate are responsible for higher levels of perchlorate in the Rialto/Colton areas. These perchlorate sources have been addressed through the use of well-head treatment facilities, wherever concentrations in public water supplies exceed standards set by the California Public Health Department. No public water supplies in the region exceed these standards.

**14. Are there other settlement agreements that the regional board might consider?**

None have yet been proposed, but it is possible that other settlement agreements will be proposed or implemented.

**15. What do you think is the timeline for the state board to conduct their evidentiary hearing and make a ruling before the full state board?**

As a consequence of the need to maintain a strict separation of functions, we may not even talk to the state board members or involved staff concerning this matter.

**16. Do you, as a board member, have the help you need to evaluate the best way to address your region's perchlorate problems?**

As board members, this is something that we cannot talk or write about outside of a public hearing process concerning this subject. We sit in a quasi-adjudicatory role and must maintain our impartiality in this matter. As such, ex parte rules



strictly prohibit us from addressing such questions, until this matter is no longer before the regional board.

### **Cleaning Up Polluted Waters**

- 17. In your view, what is the role of regional water boards regarding required testing and standard limits for pharmaceutical and over-the-counter drugs in drinking water? Should the state water board, through regional boards, be working with the California Department of Public Health to require testing and set safety limits for pharmaceuticals in drinking water?**

The role of the regional boards with respect to emerging chemicals of concern, including pharmaceuticals, endocrine disruptors and personal care products, is to require that dischargers and groundwater recharge agencies perform adequate monitoring to provide an understanding of the levels of these constituents in what is discharged or imported into a groundwater basin. Further, regional boards should ensure compliance with whatever standards are established for these constituents by the California Department of Public Health, in collaboration with the Office of Environmental Health Hazard Assessment (OEHHA). With respect to "safety limits" in drinking water, it is the responsibility of the California Department of Public Health to set safe levels for any constituents in drinking water, and the regional boards may be able to assist in this process by providing additional data for consideration in that process.

- 18. What will be the role of your board's emerging contaminate task force? Under what timeline will they operate?**

The Emerging Contaminants work group is a creation of the stakeholders in the region that discharge wastewater under permit from the regional board, or that recharge imported water into the underlying groundwater. That group, including the regional board Executive Officer, has already received extensive scientific testimony from outside experts concerning the chemicals that make up the so-called "emerging contaminants," the difficulties with sampling and analyzing these constituents, and how these various chemicals survive the various treatment barriers during wastewater treatment and water supply treatment processes. It is expected that, before the end of 2009, the work group will propose two different monitoring plans for consideration by the regional board; one for wastewater discharges and a second for imported water used for groundwater recharge.





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